

TITLE 73

VETERANS AND VETERANS' AFFAIRS

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73.04.010 Pension papers—Fees not to be charged. No judge, or clerk of court, county clerk, county auditor, or any other county officer, shall be allowed to charge any honorably discharged soldier or seaman, or the spouse, orphan, or legal representative thereof, any fee for administering any oath, or giving any official certificate for the procuring of any pension, bounty, or back pay, nor for administering any oath or oaths and giving the certificate required upon any voucher for collection of periodical dues from the pension agent, nor any fee for services rendered in perfecting any voucher. [1973 1st ex.s. c 154 § 106; 1891 c 14 § 1; RRS § 4232.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

73.04.020 Pension papers—Fees not to be charged—Penalty. Any such officer who may require and accept fees for such services shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than ten dollars nor more than fifty dollars. [1891 c 14 § 2; RRS § 4233.]

73.04.030 Recording honorable discharges without charge. Each county auditor of the several counties of the state of Washington shall record upon presentation without expense, in a suitable permanent record the honorable discharge of any veteran who was a resident of the county, at the time of his enlistment or induction into the armed forces of the United States. [1943 c 38 §

Chapter 73.04 GENERAL PROVISIONS

Sections

- 73.04.010 Pension papers—Fees not to be charged.

1; Rem. Supp. 1943 § 10758–10. FORMER PART OF SECTION: 1923 c 17 § 1 now codified as RCW 73.04.042.]

73.04.040 Recording honorable discharges without charge—Certified copy as proof. A certified copy of such record shall be prima facie proof for all purposes of the services rendered, citizenship, place and date of birth of such veteran. [1943 c 38 § 2; Rem. Supp. 1943 § 10758–11.]

73.04.042 Recording honorable discharge—Veterans of Spanish–American War and World War I. It shall be the duty of county auditors to record without charge, in a book kept for that purpose, the certificate of discharge of any honorably discharged soldier, sailor or marine who served with the United States forces in the war with Germany and her allies and veterans of the Spanish–American War. [1923 c 17 § 1; 1919 c 86 § 1; RRS § 4094–1. Formerly RCW 73.04.030, part.]

73.04.050 Right to peddle, vend, sell goods without license—License fee on business established under act of congress prohibited. Every honorably discharged soldier, sailor or marine of the military or naval service of the United States, who is a resident of this state, shall have the right to peddle, hawk, vend and sell goods, other than his own manufacture and production, without paying for the license as now provided by law, by those who engage in such business; but any such soldier, sailor or marine may engage in such business by procuring a license for that purpose as provided in RCW 73.04.060.

No county, city or political subdivision in this state shall charge or collect any license fee on any business established by any veteran under the provisions of Public Law 346 of the 78th congress. [1945 c 144 § 9; 1903 c 69 § 1; Rem. Supp. 1945 § 10755. Formerly RCW 73.04.050, part and 73.04.060. FORMER PART OF SECTION: 1945 c 144 § 10 now codified as RCW 73.04.060.]

Reviser's note: 1945 c 144 §§ 9 and 10 amending 1903 c 69 §§ 1 and 2 were declared unconstitutional in *Larsen v. City of Shelton*, 37 Wn. (2d) 481.

Peddlers' and hawkers' licenses: Chapter 36.71 RCW (but compare language of the session law source).

73.04.060 Right to peddle, vend, sell goods without license—Issuance of license. On presentation to the county auditor or city clerk of the county in which any such soldier, sailor or marine may reside, of a certificate of honorable discharge from the army or naval service of the United States, such county auditor or city clerk, as the case may be, shall issue without cost to such soldier, sailor or marine, a license authorizing him to carry on the business of peddler, as provided in RCW 73.04.050. [1945 c 144 § 10; 1903 c 69 § 2; Rem. Supp. 1945 § 10756. Formerly RCW 73.04.050, part. FORMER PART OF SECTION: 1945 c 144 § 9, part now codified in RCW 73.04.050.]

Reviser's note: 1945 c 144 § 10 amending 1903 c 69 § 2 declared unconstitutional, see note following RCW 73.04.050.

73.04.070 Meeting hall may be furnished veterans' organizations. Counties, cities and other political subdivisions of the state of Washington are authorized to furnish free of charge a building, office and/or meeting hall for the exclusive use of the several nationally recognized veterans' organizations and their auxiliaries, subject to the direction of the committee or person in charge of such building, office and/or meeting hall. The several nationally recognized veterans' organizations shall have access at all times to said building, office and/or meeting hall. Counties, cities and other political subdivisions shall further have the right to furnish heat, light, utilities, furniture and janitor service at no cost to the veterans' organizations and their auxiliaries. [1945 c 108 § 1; Rem. Supp. 1945 § 10758–60.]

73.04.080 Meeting place rental may be paid out of county fund. Any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress which has qualified to accept relief from the indigent soldiers' relief fund of any county may draw upon said county fund for the payment of the rent of its regular meeting place: *Provided*, That no post, camp or chapter shall be allowed to draw on such fund for this purpose to exceed the sum of one hundred eighty dollars in any one year, or in any amount for hall rental where said post, camp or chapter is furnished quarters by the state or by any municipality.

Before such claims are ordered paid by the county commissioners, the commander of such posts, camps or chapters shall file a proper claim each month with the county auditor for such rental. [1947 c 180 § 7; 1945 c 144 § 8; 1921 c 41 § 8; 1915 c 69 § 1; 1909 c 64 § 1; Rem. Supp. 1947 § 10743.]

73.04.090 Benefits, preferences, exemptions, etc., limited to veterans subject to full, continuous military control. All benefits, advantages or emoluments, not available upon equal terms to all citizens, including but not being limited to preferred rights to public employment, civil service preference, exemption from license fees or other impositions, preference in purchasing state property and special pension or retirement rights, which by any law of this state have been made specially available to war veterans or to persons who have served in the armed forces or defense forces of the United States, shall be available only to persons who have been subject to full and continuous military control and discipline as actual members of the federal armed forces. Service with such forces in a civilian capacity, or in any capacity wherein a person retained the right to terminate his service or to refuse full obedience to military superiors, shall not be the basis for eligibility for such benefits. Service in any of the following shall not for purposes of this section be considered as military service: The office of emergency services or any component thereof; the American Red Cross; the United States Coast Guard Auxiliary; United States Coast Guard Reserve Temporary; United States Coast and Geodetic Survey; American Field Service; Civil Air Patrol; Cadet Nurse Corps, and any other similar organization. [1974

1st ex.s. c 171 § 45; 1947 c 142 § 1; Rem. Supp. 1947 § 10758-115.]

Veterans' bonus, persons disqualified: RCW 73.32.030, 73.33.030.

73.04.100 Credit toward law degree. Any person who has served in any branch of the armed forces of the United States and who is enrolled or who hereafter enrolls as a student in any law school in the state of Washington, shall be given credit for two school quarters of work on his law course, by reason of such service, toward his law degree: *Provided*, That such service shall have been for a period of at least one year prior to September 1, 1945. [1947 c 252 § 1; Rem. Supp. 1947 § 10758-110.]

73.04.110 Free motor vehicle license for certain disabled veterans. Any veteran who is a veteran of any war of the United States, or of any military campaign for which a campaign ribbon shall have been awarded, who shall submit to the director of motor vehicles satisfactory proof that he has lost the use of one or both of his arms or legs or that he had become blind in both eyes as the result of his military service in such war or military campaign, shall be entitled to have issued to him by the director of motor vehicles and annual motor vehicle license for one automobile without the payment of any license fee or excise tax thereon.

For the purposes of this section, "blind" shall mean that definition of "blind" utilized by the state of Washington in determining eligibility for financial assistance to the blind under Title 74 RCW. [1972 ex.s. c 60 § 1; 1971 ex.s. c 193 § 1; 1951 c 206 § 1; 1949 c 178 § 1; Rem. Supp. 1949 § 6360-50-1.]

73.04.120 Certificate stating marital status available free. County clerks and county auditors, respectively, are authorized and directed to furnish free of charge to the legal representative, surviving spouse, child or parent of any deceased veteran certified copies of marriage certificates, decrees of divorce or annulment, or other documents contained in their files affecting the marital status of such veteran whenever any such document shall be required in connection with any claim pending before the United States veterans' bureau or other governmental agency administering benefits to war veterans. Where these same documents are required of service personnel of the armed forces of the United States for determining entitlement to family allowances and other benefits, they shall be provided without charge by county clerks and county auditors upon request of the person in the service or his dependents. [1967 c 89 § 1; 1949 c 16 § 1; Rem. Supp. 1949 § 10758-13b.]

73.04.130 Secretary of department of social and health services authorized to act as executor, administrator, guardian or federal fiduciary of veteran's estate—Appointment. The secretary of the department of social and health services or his designee is authorized to act as executor under the last will, or as administrator of the estate of any deceased veteran, or as the guardian or duly appointed federal fiduciary of the estate of any

insane or incompetent veteran, or as guardian or duly appointed federal fiduciary of the estate of any person who is a bona fide resident of the state of Washington and who is certified by the veterans' administration as having money due from the veterans' administration, the payment of which is dependent upon the appointment of a guardian or other type fiduciary. No fee shall be allowed or paid to the secretary or his designee for acting as executor, administrator, guardian or fiduciary, or to any attorney for the secretary or his designee.

The secretary or his designee, or any other interested person may petition the appropriate court for the appointment of the secretary or his designee. Any such petition by the secretary or his designee shall be without cost and without fee. If appointed, the secretary or his designee may serve without bond. This section shall not affect the prior right to act as administrator of a veterans' estate of such persons as are denominated in RCW 11.28.120(1) and (2), nor shall this section affect the appointment of executor made in the last will of any veteran, nor shall this section apply to estates larger than seventy-five hundred dollars. [1974 1st ex.s. c 63 § 1; 1972 ex.s. c 4 § 1.]

Chapter 73.08 VETERANS' RELIEF

Sections	
73.08.010	County aid to indigent veterans and families— Procedure.
73.08.030	Procedure where no veterans' organization in precinct.
73.08.040	Notice of intention to furnish relief—Annual statement.
73.08.050	Performance bond may be required.
73.08.060	Restrictions on sending veterans or families to alms- houses, etc.
73.08.070	County burial of indigent deceased veterans.
73.08.080	Tax levy authorized.

Soldiers' and veterans' homes: Chapter 72.36 RCW.

Soldiers' home: State Constitution Art. 10 § 3.

73.08.010 County aid to indigent veterans and families—Procedure. For the relief of indigent and suffering Union soldiers, sailors and marines who served in the Civil War, in the war of Mexico or in any of the Indian wars in the United States, the Spanish-American war and Philippine insurrection, soldiers, sailors and marines who served in the United States army, navy, or marine corps between April 6, 1917, and the date upon which peace is finally concluded with the German government and its allies, or soldiers, sailors and marines who served in the army, navy or marine corps of the United States in any other foreign war, insurrection, or expedition, which service shall be governed by the issuance of a campaign badge by the government of the United States of America, or for any members of the armed forces of the United States in the existing war between the United States and Japan and her allies, or the existing war between the United States and Germany and her allies, and their families or the families of those deceased, who need assistance in any city, town or precinct in this state, the board of commissioners of the county in which said city, town or precinct is situated shall provide such sum or sums of

money as may be necessary, to be drawn upon by the commander and quartermaster, or commander and adjutant of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress in said city or town upon recommendation of the relief committee of said post, camp or chapter: *Provided*, Said soldier, sailor or marine, or the families of those deceased are and have been residents of the state for at least twelve months, and the orders of said commander and quartermaster, or commander and adjutant shall be the proper voucher for the expenditure of said sum or sums of money. [1947 c 180 § 1; 1945 c 144 § 1; 1921 c 41 § 1; 1919 c 83 § 1; 1907 c 64 § 1; 1893 c 37 § 1; 1888 p 208 § 1; Rem. Supp. 1947 § 10737. Cf. 1935 c 38 § 1.]

Soldiers' home and colony: Chapter 72.36 RCW.

Veterans' rehabilitation council: Chapter 43.61 RCW.

Washington veterans' home: Chapter 72.36 RCW.

73.08.030 Procedure where no veterans' organization in precinct. If there be no post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress, in any precinct in which it should be granted, the county commissioners of the county in which said precinct is, may accept and pay the orders drawn, as hereinbefore provided by the commander and quartermaster, or commander and adjutant, of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress, located in the nearest city or town, upon the recommendation of a relief committee who shall be residents of the said precinct in which the relief may be furnished. [1947 c 180 § 2; 1945 c 144 § 2; 1921 c 41 § 2; 1907 c 64 § 2; 1888 p 208 § 2; Rem. Supp. 1947 § 10738.]

73.08.040 Notice of intention to furnish relief—Annual statement. *Upon the passage of this act the commander of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress which shall undertake the relief of indigent veterans and their families, as hereinbefore provided, before the acts of said commander and quartermaster, or commander and adjutant may become operative in any city or precinct, shall file with the county auditor of such county, notice that said post, camp or chapter intends to undertake such relief as is provided by this chapter. Such notice shall contain the names of the relief committee of said post, camp or chapter in such city or precinct, and the commander of said post, camp or chapter shall annually thereafter during the month of October file a similar notice with said auditor, and also a detailed statement of the amount of relief furnished during the preceding year, with the names of all persons to whom such relief shall have been furnished, together with a brief statement in each case from the relief committee upon whose recommendations the orders were drawn. [1947 c 180 § 3; 1945 c 144 § 3; 1921 c 41 § 3; 1907 c 64 § 3; 1888 p 209 § 3; Rem. Supp. 1947 § 10739.]

*Reviser's note: The language "Upon the passage of this act" first appears in 1888 p 209 § 3.

73.08.050 Performance bond may be required. The county commissioners may require of the commander and quartermaster, or commander and adjutant, of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress undertaking to distribute relief under this chapter a bond with sufficient and satisfactory sureties for the faithful and honest discharge of their duties under this chapter. [1947 c 180 § 4; 1945 c 144 § 4; 1921 c 41 § 4; 1907 c 64 § 4; 1888 p 209 § 4; Rem. Supp. 1947 § 10740.]

73.08.060 Restrictions on sending veterans or families to almshouses, etc. County commissioners are hereby prohibited from sending indigent Union, Spanish-American war soldiers, sailors and marines, soldiers, sailors and marines who have served the United States in the United States army, navy, or marine corps between April 6, 1917, and the date upon which peace is finally concluded with the German government and its allies, or soldiers, sailors and marines who served in the army, navy, or marine corps of the United States in any other foreign war, insurrection or expedition, which service shall be governed by the issuance of a campaign badge by the government of the United States of America, or any members of the armed forces of the United States in the existing war between the United States and Germany and her allies or the existing war between the United States and Japan and her allies (or their families or the families of the deceased), of the classes of persons mentioned in RCW 73.08.010, to any almshouse (or orphan asylum) without the concurrence and consent of the commander and relief committee of the post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress as provided in RCW 73.08.010 and 73.08.030. Indigent veterans shall, whenever practicable, be provided for and relieved at their homes in such city, town or precinct in which they shall have a residence, in the manner provided in RCW 73.08.010 and 73.08.030. Indigent or disabled veterans of the classes specified in RCW 73.08.010, who are not insane and have no families or friends with whom they may be domiciled, may be sent to any soldiers' home. [1947 c 180 § 5; 1945 c 144 § 5; 1919 c 83 § 5; 1907 c 64 § 5; 1888 p 209 § 5; Rem. Supp. 1947 § 10741.]

73.08.070 County burial of indigent deceased veterans. It shall be the duty of the board of county commissioners in each of the counties in this state to designate some proper authority other than the one designated by law for the care of paupers and the custody of criminals who shall cause to be interred at the expense of the county the body of any honorably discharged soldier, sailor or marine who served in the army or the navy of the United States of America during the late Civil War or in the war with Mexico or in any of the Indian wars that occurred in the state of Washington, or the Spanish-American war and the Philippine insurrection, soldiers, sailors and marines who served in the United States army, navy or marine corps between April 6, 1917, and the date upon which

peace is finally concluded with the German government and its allies, or soldiers, sailors and marines who served in the army, navy or marine corps of the United States in any other foreign war, insurrection or expedition which service shall be governed by the issuance of a campaign badge by the government of the United States of America, or any member of the armed forces of the United States in the existing war between the United States and Germany and her allies or the existing war between the United States and Japan and her allies, and the wives, husbands, minor children, widows or widowers of such soldiers, sailors or marines, who shall hereafter die without leaving means sufficient to defray funeral expenses; and when requested so to do by the commanding officer of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress or the relief committee of any such posts, camps or chapters: *Provided, however,* That such interment shall not cost more than one hundred eighty dollars. If the deceased has relatives or friends who desire to conduct the burial of such deceased person, then upon request of said commander or relief committee a sum not to exceed one hundred eighty dollars shall be paid to said relatives or friends by the county treasurer, upon due proof of the death and burial of any person provided for by this section and proof of expenses incurred. [1949 c 15 § 1; 1947 c 180 § 6; 1945 c 144 § 6; 1921 c 41 § 6; 1919 c 83 § 6; 1917 c 42 § 1; 1907 c 64 § 6; 1899 c 99 § 1; 1888 p 209 § 6; Rem. Supp. 1949 § 10757. Formerly RCW 73.24.010.]

Counties, disposal of remains of indigent persons: RCW 36.39.030.

73.08.080 Tax levy authorized. The boards of county commissioners of the several counties in this state shall levy, in addition to the taxes now levied by law, a tax in a sum equal to the amount which would be raised by not less than one and one-eighth cents per thousand dollars of assessed value, and not greater than twenty-seven cents per thousand dollars of assessed value against the taxable property of their respective counties, to be levied and collected as now prescribed by law for the assessment and collection of taxes, for the purpose of creating the veteran's relief fund for the relief of honorably discharged veterans who served in the armed forces of the United States in the Civil War, in the war of Mexico or in any of the Indian wars, or the Spanish-American war or the Philippine insurrection, in the First World War, or Second World War or Korean conflict, or Viet Nam conflict, and the indigent wives, husbands, widows, widowers and minor children of such indigent or deceased veterans, to be disbursed for such relief by such board of county commissioners: *Provided,* That if the funds on deposit, less outstanding warrants, residing in the veteran's relief fund on the first Tuesday in September exceed the expected yield of one and one-eighth cents per thousand dollars of assessed value against the taxable property of the county, the county commissioners may levy a lesser amount: *Provided further,* That the costs incurred in the administration of said veteran's relief fund shall be computed by the county treasurer not less than annually and such

amount may then be transferred from the veteran's relief fund as herein provided for to the county current expense fund. [1973 2nd ex.s. c 4 § 5; 1973 1st ex.s. c 195 § 86; 1970 ex.s. c 47 § 9; 1969 c 57 § 1; 1945 c 144 § 7; 1921 c 41 § 7; 1919 c 83 § 7; 1907 c 64 § 7; 1893 c 37 § 2; 1888 p 210 § 7; Rem. Supp. 1945 § 10742. Formerly RCW 73.08.020.]

Emergency and effective dates—1973 2nd ex.s. c 4: See notes following RCW 84.52.043.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Chapter 73.12 VETERANS' LOAN INSURANCE

Sections

73.12.010	Statement of purpose.
73.12.030	Veterans' loan insurance fund created.
73.12.040	Veterans' loan insurance reserve fund.
73.12.050	Reserve fund to pay losses—Limitation.
73.12.060	Investment of fund—Expense of loan insurance division.

73.12.010 Statement of purpose. It is the intention of the legislature by this chapter to partially discharge the obligation of the state of Washington to those of its citizens who are serving, or who shall have served, in the army, navy, marine corps or coast guard, during World War II, by creating in the *department of finance, budget and business the division of veterans' loan insurance and authorizing the director through said division to guarantee, to the extent provided in this chapter, loans made to such citizens by state banks and savings and loan associations, in conjunction with loan guarantees made by the federal government under Public Law No. 346, or as the same may be hereafter amended, being chapter 268 of the second session of the 78th congress, in order that such citizens may more readily obtain loans for their economic rehabilitation and readjustment to civilian life. [1945 c 217 § 1; Rem. Supp. 1945 § 10758–80.]

***Reviser's note:** Powers and duties of the "department of finance, budget and business" have devolved upon the department of general administration, see 1955 c 285 §§ 4, 14, 16 and 18 (RCW 43.19.010 and 43.19.015).

73.12.030 Veterans' loan insurance fund created. There is hereby created in the division of veterans' loan insurance the veterans' loan insurance fund. [1945 c 217 § 4; Rem. Supp. 1945 § 10758–83.]

73.12.040 Veterans' loan insurance reserve fund. From the veterans' loan insurance fund and from any loan insurance premiums paid to the division of veterans' loan insurance by any borrowers or lenders qualified to borrow or lend under the terms of this chapter, the *director of finance, budget and business shall create the veterans' loan insurance reserve fund which shall constitute the sole fund from which there may be paid any losses accruing to any state bank or savings and loan association from any loans guaranteed under the provisions of this chapter. [1945 c 217 § 5; Rem. Supp. 1945 § 10758–84.]

***Reviser's note:** Powers and duties of the "director of finance, budget and business" have devolved on the director of general administration, see note following RCW 73.12.010.

73.12.050 Reserve fund to pay losses—Limitation. The director shall have authority to pay out of the veterans' loan insurance reserve fund such losses as may result from any loans guaranteed under the provisions of this chapter to the extent of such guarantee: *Provided*, That the aggregate liability of the veterans' loan insurance reserve fund for all such losses shall never exceed the total amount in said reserve fund. [1945 c 217 § 6; Rem. Supp. 1945 § 10758–85.]

73.12.060 Investment of fund—Expense of loan insurance division. All money in the veterans' loan insurance fund and all money in the veterans' loan insurance reserve fund shall be invested by the state finance committee and all expenses of the veterans' loan insurance division shall be paid by the director from the income from said investments, which expenses the director is hereby authorized to incur and pay. [1945 c 217 § 7; Rem. Supp. 1945 § 10758.]

Chapter 73.16 EMPLOYMENT AND REEMPLOYMENT

Sections

73.16.010	Preference in public employment.
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73.16.033	Reemployment of returned veterans and others.
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73.16.041	Leaves of absence of elective and judicial officers.
73.16.051	Restoration without loss of seniority or benefits.
73.16.061	Enforcement of provisions.
73.16.070	Federal act to apply in state courts.

73.16.010 Preference in public employment. In every public department, and upon all public works of the state, and of any county thereof, honorably discharged soldiers, sailors, and marines who are veterans of any war of the United States, or of any military campaign for which a campaign ribbon shall have been awarded, and their spouses, shall be preferred for appointment and employment. Age, loss of limb, or other physical impairment, which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the capacity necessary to discharge the duties of the position involved. [1973 1st ex.s. c 154 § 107; 1951 c 29 § 1; 1943 c 141 § 1; 1919 c 26 § 1; 1915 c 129 § 1; 1895 c 84 § 1; Rem. Supp. 1943 § 10753.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Veterans to receive preference status in competitive examinations for public employment: RCW 41.04.010.

73.16.015 Enforcement of preference—Civil action. Any veteran entitled to the benefits of RCW 73.16.010 may enforce his rights hereunder by civil action in the courts. [1951 c 29 § 2.]

73.16.020 Penalty for failure to comply. All officials or other persons having power to appoint to or employment in the public service set forth in RCW 73.16.010, are charged with a faithful compliance with its terms, both in letter and in spirit, and a failure therein shall be a misdemeanor, and on conviction shall be punished by a fine of not less than five dollars nor more than twenty-five dollars. [1895 c 84 § 2; RRS § 10754.]

73.16.031 Reemployment—Definitions. As used in RCW 73.16.031 through 73.16.061, the term:

"Resident" means any person residing in the state.

"Position of employment" means any position (other than temporary) wherein a person is engaged for a private employer, company, corporation, state, municipality, or political subdivision thereof.

"Temporary position" means a position of short duration which, after being vacated, ceases to exist and wherein the employee has been advised as to its temporary nature prior to his engagement.

"Employer" means the person, firm, corporation, state and any political subdivision thereof, or public official currently having control over the position which has been vacated.

"Rejectee" means a person rejected because he is not, physically or otherwise, qualified to enter the service. [1953 c 212 § 1.]

Employment and reemployment rights of members of organized militia upon return from active duty: RCW 38.24.060.

73.16.033 Reemployment of returned veterans and others. Any person who is a resident of this state and who voluntarily or upon demand, vacates a position of employment to determine his physical fitness to enter, or, who actually does enter upon active duty or training in the Washington National Guard, the armed forces of the United States, or the United States public health service, shall, provided he meets the requirements of RCW 73.16.035, be reemployed forthwith: *Provided*, That the employer need not reemploy such person if circumstances have so changed as to make it impossible, unreasonable, or against the public interest for him to do so: *Provided further*, That this section shall not apply to a temporary position.

If such person is still qualified to perform the duties of his former position, he shall be restored to that position or to a position of like seniority, status and pay. If he is not so qualified as a result of disability sustained during his service, or during the determination of his fitness for service, but is nevertheless qualified to perform the duties of another position, under the control of the same employer, he shall be reemployed in such other position: *Provided*, That such position shall provide him with like seniority, status, and pay, or the nearest approximation thereto consistent with the circumstances of the case. [1953 c 212 § 2.]

73.16.035 Eligibility requirements. In order to be eligible for the benefits of RCW 73.16.031 through 73.16.061, an applicant must comply with the following requirements:

(1) He must furnish a receipt of an honorable discharge, report of separation, certificate of satisfactory service, or other proof of having satisfactorily completed his service. Rejectees must furnish proof of orders for examination and rejection.

(2) He must make written application to the employer or his representative within ninety days of the date of his separation or release from training and service. Rejectees must apply within thirty days from date of rejection.

(3) If, due to the necessity of hospitalization, while on active duty, he is released or placed on inactive duty and remains hospitalized, he is eligible for the benefits of RCW 73.16.031 through 73.16.061: *Provided*, That such hospitalization does not continue for more than one year from date of such release or inactive status: *Provided further*, That he applies for his former position within ninety days after discharge from such hospitalization.

(4) He must return and reenter the office or position within three months after serving four years or less: *Provided*, That any period of additional service imposed by law, from which one is unable to obtain orders relieving him from active duty, will not affect his reemployment rights. [1969 c 16 § 1; 1953 c 212 § 3.]

73.16.041 Leaves of absence of elective and judicial officers. When any elective officer of this state or any political subdivision thereof, including any judicial officer, shall enter upon active service or training as provided in RCW 73.16.031, 73.16.033 and 73.16.035, the proper officer, board or other agency, which would ordinarily be authorized to grant leave of absence or fill a vacancy created by the death or resignation of the elective official so ordered to such service, shall grant an extended leave of absence to cover the period of such active service or training and may appoint a temporary successor to the position so vacated. No leave of absence provided for herein shall operate to extend the term for which the occupant of any elective position shall have been elected. [1953 c 212 § 4.]

73.16.051 Restoration without loss of seniority or benefits. Any person who is entitled to be restored to a position in accordance with the provisions of RCW 73.16.031, 73.16.033, 73.16.035, and 73.16.041 shall be considered as having been on furlough or leave of absence, from his position of employment, during his period of active military duty or service, and he shall be so restored without loss of seniority. He shall further be entitled to participate in insurance, vacations, retirement pay and other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was ordered into the service; and he shall not be discharged from such position without cause within one year after restoration: *Provided*, That no employer shall be required to make any payment to keep insurance or retirement rights current during such period of military service. [1953 c 212 § 5.]

73.16.061 Enforcement of provisions. In case any employer, his successor or successors fails or refuses to comply with the provisions of RCW 73.16.031 through 73.16.061, the prosecuting attorney of the county in which the employer is located shall bring action in the superior court to obtain an order to specifically require such employer to comply with the provisions hereof, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful act. Any such person who does not desire the services of the prosecuting attorney may, by private counsel, bring such action. [1953 c 212 § 6.]

73.16.070 Federal act to apply in state courts. The soldiers' and sailors' civil relief act of 1940, Public Act No. 861, 76th congress, is hereby specifically declared to apply in proper cases in all the courts of this state. [1941 c 201 § 5; Rem. Supp. 1941 § 10758-7.]

**Chapter 73.20
ACKNOWLEDGMENTS AND POWERS OF
ATTORNEY**

Sections	
73.20.010	Acknowledgments.
73.20.050	Agency created by power of attorney not revoked by unverified report of death.
73.20.060	Affidavit of agent as to knowledge of revocation.
73.20.070	"Missing in action" report not construed as actual knowledge.
73.20.080	Provision in power for revocation not affected.

73.20.010 Acknowledgments. In addition to the acknowledgment of instruments and the performance of other notarial acts in the manner and form and as otherwise authorized by law, instruments may be acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and other notarial acts performed, before or by any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army or marine corps, or with the rank of ensign or higher in the navy or coast guard, or with equivalent rank in any other component part of the armed forces of the United States, by any person who either

- (1) is a member of the armed forces of the United States, or
- (2) is serving as a merchant seaman outside the limits of the United States included within the forty-eight states and the District of Columbia; or
- (3) is outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged.

Such acknowledgment of instruments, attestation of documents, administration of oaths and affirmations, execution of depositions and affidavits, and performance of other notarial acts, heretofore or hereafter made or taken, are hereby declared legal, valid and

binding, and instruments and documents so acknowledged, authenticated, or sworn to shall be admissible in evidence and eligible to record in this state under the same circumstances, and with the same force and effect as if such acknowledgment, attestation, oath, affirmation, deposition, affidavit, or other notarial act, had been made or taken within this state before or by a duly qualified officer or official as otherwise provided by law.

In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate endorsed upon or attached to the instrument or documents, which shows the date of the notarial act and which states, in substance, that the person appearing before the officer acknowledged the instrument as his act or made or signed the instrument or document under oath, shall be sufficient for all intents and purposes. The instrument or document shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

If the signature, rank, and branch of service or subdivision thereof, of any such commissioned officer appear upon such instrument or document or certificate, no further proof of the authority of such officer so to act shall be required and such action by such commissioned officer shall be prima facie evidence that the person making such oath or acknowledgment is within the purview of this section. [1945 c 271 § 1; Rem. Supp. 1945 § 10758-13a. See also, 1943 c 47. Formerly RCW 73.20.010 through 73.20.040.]

Acknowledgments, generally: Chapter 64.08 RCW.

False acknowledgments: RCW 9.44.030.

73.20.050 Agency created by power of attorney not revoked by unverified report of death. No agency created by a power of attorney in writing given by a principal who is at the time of execution, or who, after executing such power of attorney, becomes either (1) a member of the armed forces of the United States, or (2) a person serving as a merchant seaman outside the limits of the United States, included within the forty-eight states and the District of Columbia; or (3) a person outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged, shall be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees, or personal representatives of the principal. [1945 c 139 § 1; Rem. Supp. 1945 § 10758-70.]

Severability—1945 c 139: "If any provision of this act or the application thereof to any person or circumstance be held invalid, such invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable." [1945 c 139 § 5.] This applies to RCW 73.20.050-73.20.080.

73.20.060 Affidavit of agent as to knowledge of revocation. An affidavit, executed by the attorney in fact or agent, setting forth that the maker of the power of attorney is a member of the armed forces of the United States or within the class of persons described in RCW 73.20.050, and that he has not or had not, at the time of doing any act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death or otherwise, or notice of any facts indicating the same, shall, in the absence of fraud, be conclusive proof of the nonrevocation or nontermination of the power at such time. If the exercise of the power requires execution and delivery of any instrument which is recordable under the laws of this state, such affidavit shall likewise be recordable. [1945 c 139 § 2; Rem. Supp. 1945 § 10758-71.]

73.20.070 "Missing in action" report not construed as actual knowledge. No report or listing, either official or otherwise, of "missing" or "missing in action", as such words are used in military parlance, shall constitute or be interpreted as constituting actual knowledge or actual notice of the death of such principal or notice of any facts indicating the same, or shall operate to revoke the agency. [1945 c 139 § 3; Rem. Supp. 1945 § 10758-72.]

73.20.080 Provision in power for revocation not affected. RCW 73.20.050 through 73.20.070 shall not be construed so as to alter or affect any provision for revocation or termination contained in such power of attorney. [1945 c 139 § 4; Rem. Supp. 1945 § 10758-73.]

Chapter 73.24 BURIAL

Sections

73.24.020	Contract for care of veterans' plot at Olympia.
73.24.030	Authorized burials in plot.
73.24.040	Burial of deceased volunteers.

73.24.020 Contract for care of veterans' plot at Olympia. The *director of the department of finance, budget and business is hereby authorized and directed to contract with Olympia Lodge No. 1, F.&A.M., a corporation for the improvement and perpetual care of the state veterans' plot in the Masonic cemetery at Olympia; such care to include the providing of proper curbs and walks, cultivating, reseeding and fertilizing grounds, repairing and resetting the bases and monuments in place on the ground, leveling grounds, and transporting and setting headstones for graves of persons hereafter buried on the plot. [1937 c 36 § 1; RRS § 10758-1.]

***Reviser's note:** Powers and duties of the "director of the department of finance, budget and business" transferred to the director of general administration, see note following RCW 73.12.010.

Cemeteries, endowment and nonendowment care: Chapters 68.40, 68.44 RCW.

73.24.030 Authorized burials in plot. The said plot shall be available without charge or cost for the burial of persons who have served in the army, navy, or marine corps in the United States, in the Spanish–American war, Philippine insurrection, or the Chinese Relief Expedition, or who served in any said branches of said service at any time between April 21, 1898 and July 4, 1902. [1937 c 36 § 2; RRS § 10758–2.]

73.24.040 Burial of deceased volunteers. It shall be the duty of the adjutant general of this state to make suitable provision for the interment of the remains of all deceased Washington volunteers returned to this state by the United States government, and whenever possible, he shall communicate with the relatives or friends of such deceased volunteers, and when practicable be governed by their desires as to the disposition of such remains. In case the adjutant general should fail to receive directions from relatives or friends of any deceased volunteer it shall be his duty to inter such remains in the state cemetery at Orting, Washington, or such other public cemetery as in his judgment may be deemed advisable. [1899 c 108 § 1; RRS § 10758.]

Chapter 73.28 ARMS TO SONS OF VETERANS

Sections

- 73.28.010 Adjutant general may issue.
73.28.020 Application—Contents.
73.28.030 Bond for return.
73.28.040 Arms to be returned, when and to whom.

73.28.010 Adjutant general may issue. The adjutant general of the state of Washington may, in his discretion and under the regulations prescribed in this chapter, issue to any regularly organized camp of the order of Sons of Veterans in the state of Washington any arms and accoutrements belonging to the state which are not required for the use of the national guard. [1890 p 481 § 1; RRS § 8604.]

73.28.020 Application—Contents. Before any arms or accoutrements are issued, as provided in RCW 73.28.010, the captain of the camp desiring such arms or accoutrements shall make a written application for the same to the adjutant general, which application shall be accompanied by a list of the names of the officers and members of such camp. The captain shall also give any additional information in regard to said camp which may be required by the adjutant general. [1890 p 481 § 2; RRS § 8605.]

73.28.030 Bond for return. The captain of any camp of the order of Sons of Veterans which shall receive arms or accoutrements as provided in this chapter, shall give a bond for the return of the same, payable to the state of Washington, in such sum as the adjutant general may require, which bond shall be signed by two good and sufficient sureties, who shall be property holders and citizens of the state of Washington, and shall be approved by the adjutant general. [1890 p 482 § 3; RRS § 8606.]

73.28.040 Arms to be returned, when and to whom. The captain of any camp of the order of Sons of Veterans which shall receive arms or accoutrements under the provisions of this chapter shall return the same to the adjutant general upon demand or upon the disbanding of said camp. [1890 p 482 § 4; RRS § 8607.]

Chapter 73.32 VETERANS' BONUS—1949 ACT

Sections

- 73.32.020 Additional compensation authorized—Amount and to whom payable.
73.32.030 Persons disqualified.
73.32.040 Applications for compensation—Fund created.
73.32.043 Terminal dates for filing and processing applications.
73.32.045 Compensation to mentally incompetent persons.
73.32.050 Forms—Payment of administrative expense.
73.32.060 Executive officer of veterans' rehabilitation council to assist auditor.
73.32.070 Warrants may be issued in anticipation of issuance of bonds.
73.32.080 Issuance and sale of bonds.
73.32.085 Bonds negotiable.
73.32.120 Deposit of bond proceeds.
73.32.130 Additional cigarette tax imposed—Disposition of revenues from cigarette taxes.
73.32.140 State contracts to levy tax and deposit proceeds.
73.32.150 Free official service—Discounting certificates—Penalty.
73.32.160 Penalty for false claims, representations.
73.32.170 Cigarette tax not exclusive.
73.32.180 Bonus is separate property—Exemptions from process.
73.32.900 Severability—1949 c 180.
73.32.910 Construction—1949 c 180.

73.32.020 Additional compensation authorized—Amount and to whom payable. There shall be paid to each person who was on active federal service as a member of the armed military or naval forces of the United States between the seventh day of December, 1941, and the second day of September, 1945, who at the time of his or her entry upon active federal service and for a period of one year prior thereto was a bona fide citizen or resident of the state of Washington, or who was a member of one of the regular military services on December 7, 1941, and on that date and for one year prior thereto was a bona fide citizen or resident of the state of Washington, for service between said dates, the sum of ten dollars for each and every month or major fraction thereof of such duty performed within the continental limits of the United States, and fifteen dollars for each and every month or major fraction thereof of such duty performed outside the continental limits of the United States: *Provided*, That persons who have already received extra compensation for such service from any other state or territory shall not be entitled to the compensation under this chapter, unless the amount of compensation so received is less than they would be entitled to hereunder, in which event they shall receive the difference between the compensation payable under this chapter and the extra compensation already received from such other state or territory. In case of the death of any such person prior to June 8, 1949, an equal amount shall be paid to his surviving spouse if not remarried at the time compensation is requested or in case he left no spouse or in case

his spouse has remarried and he has left children, then to his surviving children, or in the event he left no spouse eligible for payment hereunder or children surviving on June 8, 1949, then to his surviving parent or parents. [1973 1st ex.s. c 154 § 108; 1950 ex.s. c 13 § 1; 1949 c 180 § 1; Rem. Supp. 1949 § 10747a.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

73.32.030 Persons disqualified. The word "person" as used in RCW 73.32.020 shall not include persons, who during the period of their service, refused on conscientious, political or other grounds to subject themselves to full military discipline and unqualified service or who were separated from such service under conditions other than honorable, and who have not subsequently been officially restored to an honorable status, and such persons shall not be entitled to the benefits of this chapter: *Provided, however,* That the word "person" as used in RCW 73.32.020 shall include those persons with honorable discharge who claimed exemptions from combatant training and service by reason of religious training and belief and whose claims were sustained under authority of the selective training and service act of 1940 and executive order No. 8606, but who were inducted into the armed forces and assigned to noncombatant service and who did not otherwise refuse to subject themselves to full military discipline and unqualified service. [1951 c 7 § 1; 1949 c 180 § 2; Rem. Supp. 1949 § 10747b.]

Benefits, preferences, etc., limited to veterans subject to full, continuous military control: RCW 73.04.090.

73.32.040 Applications for compensation—Fund created. All disbursements required by this chapter for compensation shall be made upon the presentation of a certificate upon a form to be prescribed by the state auditor, which form shall be duly verified, by the claimant under oath, and shall set forth his name, residence at the time of entry into the service, date of enlistment, induction or entry upon active federal service, beginning and ending dates of overseas service, date of discharge or release from active federal service, or if the claimant has not been released at the time of application, a statement by competent military authority that the claimant during the period for which compensation is claimed did not refuse to subject himself to full military discipline and unqualified service, and that he has not been separated from service under circumstances other than honorable. The state auditor may require such further information to be included in such certificate as he deems necessary to enable him to determine the eligibility of applicants. Such certificates shall be presented to the state auditor or his representative, together with evidence of honorable service satisfactory to the state auditor. The state auditor shall draw warrants in payment of such compensation claims against the war veterans' compensation fund, which is hereby established in the state treasury. The state auditor is given

power to make such reasonable requirements for applications as are necessary to prevent fraud or the payment of compensation to persons not entitled thereto. [1949 c 180 § 3; Rem. Supp. 1949 § 10747c.]

73.32.043 Terminal dates for filing and processing applications. Neither the state auditor nor his authorized agents shall accept any certificate presented for the purpose of obtaining the benefits of this chapter after twelve o'clock noon on December 31, 1955, nor shall he draw any warrant for the payment of any compensation authorized by this chapter unless a formal application has been filed on or before the hour and date set forth above.

The state auditor and his authorized agents shall have until December 31, 1956, to process all applications filed pursuant to this chapter and to microfilm all records pertaining thereto. [1955 c 325 § 1.]

73.32.045 Compensation to mentally incompetent persons. Where compensation is payable under this chapter to any person who is mentally incompetent at the time application is made, said compensation may be paid to any guardian, committee, conservator, or curator duly appointed, pursuant to the laws of the state of residence of said incompetent to control and manage the person and/or estate of the incompetent, or such compensation may be paid to any chief officer of any state or federal institution having custody of such incompetent: *Provided, however,* The chief officer of any state or federal institution shall use any compensation received pursuant to this section for the personal benefit of the incompetent, exclusive of care and maintenance.

The guardian, committee, conservator, curator, chief officer or person in charge shall make application for the incompetent's compensation upon the form regularly provided for such purpose pursuant to RCW 73.32.040, and in addition, shall certify under oath that the applicant is the guardian, committee, conservator, curator, chief officer, or person in charge as above set forth, and shall further certify that the compensation received shall be used for the personal benefit of the incompetent as provided herein and in accord with the laws applicable to the administration of their office.

Any compensation paid upon the basis of the above certification shall be complete settlement and satisfaction of any claim made pursuant to the provisions of this chapter as if made to a person not incompetent. [1953 c 208 § 1.]

73.32.050 Forms—Payment of administrative expense. The state auditor shall furnish free of charge upon application therefor the necessary forms upon which applications may be made and may establish at different points within the state of Washington offices at which there shall be kept on file for the use of persons covered by this chapter a sufficient number of certificate forms, so that there may be no delay in the payment of this compensation. The state auditor may authorize the county auditor or county clerk, or both, of any county of the state to act for him in receiving applications under the provisions of this chapter, and

shall furnish such persons with the proper forms to enable them to accept such applications. The state auditor is hereby authorized and directed to procure such printing, office supplies and equipment and to employ such persons as may be necessary in order to properly carry out the provisions of this chapter, and all expenses incurred by him in the administration of this chapter shall be paid by warrants drawn upon the war veterans' compensation fund. [1949 c 180 § 4; Rem. Supp. 1949 § 10747d.]

73.32.060 Executive officer of veterans' rehabilitation council to assist auditor. The executive officer of the veterans' rehabilitation council shall advise with and assist the state auditor in the performance of the duties of the auditor under this chapter, and when so called upon, the executive officer of the veterans' rehabilitation council shall employ such persons and incur such expenses as may be necessary, such expenses to be paid by warrant drawn upon the war veterans' compensation fund. [1949 c 180 § 5; Rem. Supp. 1949 § 10747e.]

73.32.070 Warrants may be issued in anticipation of issuance of bonds. The state auditor may, in his discretion, issue warrants under the provisions of this chapter in anticipation of the sale of the bonds herein authorized. [1949 c 180 § 6; Rem. Supp. 1949 § 10747f.]

73.32.080 Issuance and sale of bonds. For the purpose of providing means for the payment of compensation hereunder and for paying the expenses of administration, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of eighty million dollars. The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee. The state finance committee may, in its discretion, provide for the issuance of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary to make the payments provided for by this chapter. Each of such bonds shall be made payable at any time not exceeding thirty years from the date of its issuance, with such reserved rights of prior redemption as the state finance committee may prescribe to be specified therein. The bonds shall be signed either manually or with a stamped facsimile signature by the governor and the state auditor under the seal of the state and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Such bonds shall be sold for not less than par. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York, as to principal alone or as to both principal and interest under such regulations as the state treasurer may prescribe. Said bonds shall distinctly state that they shall not be a general obligation of the state of Washington, but shall be payable from the proceeds of cigarette taxes in the manner prescribed in this chapter. Said bonds and the interest thereon shall, so long as any portion thereof shall remain unpaid, constitute a prior and exclusive claim upon the

proceeds of said cigarette taxes and the war veterans' compensation bond retirement fund hereinafter provided for and shall be payable at such places as the state finance committee may provide. Bonds shall be in such denominations as may be prescribed by said committee. All bonds issued under the provisions of this chapter may be sold in such manner and in such amounts and at such times and on such terms and conditions as the state finance committee may prescribe: *Provided*, That if said bonds are sold to any persons other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of this chapter shall be legal investment for any of the funds of the state, including *the permanent school fund, any higher educational funds, and the accident fund of the department of labor and industries. [1949 c 180 § 7; Rem. Supp. 1949 § 10747g. Formerly RCW 73.32.080 through 73.32.110. FORMER PART OF SECTION: 1950 ex.s. c 12 § 1 now codified as RCW 73.32.085.]

***Reviser's note:** Provision permitting bonds to be legal investment for "the permanent school fund" declared unconstitutional in *Gruen v. State Tax Commission*, 35 Wn. (2d) 1.

73.32.085 Bonds negotiable. All bonds issued under the authority of this chapter shall be fully negotiable. [1950 ex.s. c 12 § 1. Formerly RCW 73.32.080, part.]

73.32.120 Deposit of bond proceeds. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of a special fund to be known as the war veterans' compensation fund, which shall be used for the payment of the compensation provided in this chapter, and for paying the expenses of the administration thereof. For the purpose of carrying out the provisions of this chapter, there is hereby appropriated from the war veterans' compensation fund the sum of eighty million dollars. [1949 c 180 § 8; Rem. Supp. 1949 § 10747h.]

73.32.130 Additional cigarette tax imposed—Disposition of revenues from cigarette taxes. There is hereby levied and there shall be collected by the department of revenue from the persons mentioned in and in the manner provided by chapter 82.24 RCW, as now or hereafter amended, an excise tax upon the sale, use, consumption, handling, possession or distribution of cigarettes in an amount equal to the rate of one mill per cigarette, but the provisions of RCW 82.24.070 allowing dealers' compensation for affixing stamps shall not apply to this additional tax. Instead, wholesalers and retailers subject to the provisions of chapter 82.24 RCW shall be allowed as compensation for their services in affixing the stamps for the additional tax required by this section a sum equal to one percent of the value of the stamps for such additional tax purchased or affixed by them.

All money derived from such tax shall be paid to the state treasurer and credited to the state general fund.

All proceeds received from the excise tax on cigarettes imposed by chapter 82.24 RCW as now or hereafter amended, shall be paid into the war veterans' compensation fund, herewith created, for distribution to veterans who served during the Viet Nam conflict as provided by *this 1972 amendatory act: *Provided*, That, whenever the receipts into the war veterans' compensation fund during any year exceed four million five hundred thousand dollars, all sums received above that amount shall be transferred to the state general fund: *Provided further*, That when all outstanding obligations payable from the war veterans' compensation fund are satisfied, the remaining balance therein shall be transferred to the state general fund and the war veterans' compensation fund abolished accordingly. The war veterans' compensation bond retirement fund is abolished as of May 5, 1974.

The amounts directed to be paid into the war veterans' compensation fund as provided by *this 1972 amendatory act shall be a first and prior charge against all cigarette tax revenues collected pursuant to RCW 82.24.020, 73.32.130, and 28A.47.440. [1974 1st ex.s. c 173 § 1; 1973 c 41 § 1. Prior: 1972 ex.s. c 157 § 2; 1972 ex.s. c 154 § 7; 1971 ex.s. c 299 § 2; 1959 c 272 § 2; prior: 1953 c 240 § 1; 1949 c 180 § 9, part; Rem. Supp. 1949 § 10747i, part.]

***Reviser's note:** "this 1972 amendatory act" [1972 ex.s. c 154] consists of the 1972 ex.s. amendment to this section and to chapter 73.34 RCW.

Severability—1972 ex.s. c 157: See note following RCW 82.24.020.

Severability—1972 ex.s. c 154: See RCW 73.34.900. *Schools, additional cigarette tax: Chapter 28A.47 RCW.*

73.32.140 State contracts to levy tax and deposit proceeds. As a part of the contract of sale of the bonds herein authorized, the state undertakes to continue to levy the taxes upon cigarettes referred to in this section and to place the proceeds thereof in the war veterans' compensation bond retirement fund and to make said fund available to meet said payments when due until all of said bonds and the interest thereon shall have been paid. [1959 c 272 § 3; 1949 c 180 § 9, part; Rem. Supp. 1949 § 10747i, part.]

73.32.150 Free official service—Discounting certificates—Penalty. No charge shall be made by any agent, notary public or attorney for any service in connection with filing an application to obtain the allowance provided for by this chapter, and no person shall, for a consideration, discount or attempt to discount, or for a consideration, advance money upon any certificate or certificates issued pursuant to the terms of this chapter. Any violation of this section shall be a gross misdemeanor. [1949 c 180 § 10; Rem. Supp. 1949 § 10747j.]

73.32.160 Penalty for false claims, representations. Any person who with intent to defraud, subscribes to any false oath or makes any false representation, either in the execution of the certificates provided for by this chapter, or who with intent to defraud, presents to the state auditor or any other officer any certificate for the purpose of obtaining funds provided by this chapter,

which do not in fact belong to such person, or makes any false representation in connection with obtaining any funds under the terms of this chapter, shall be guilty of a felony. [1949 c 180 § 11; Rem. Supp. 1949 § 10747k.]

73.32.170 Cigarette tax not exclusive. The legislature may provide additional means for raising money for the payment of the interest and principal of said bonds, and this chapter shall not be deemed to provide an exclusive method for such payment. The power given to the legislature by this section is permissive and shall not be construed to constitute a pledge of the general credit of the state of Washington. [1949 c 180 § 12; Rem. Supp. 1949 § 10747l.]

73.32.180 Bonus is separate property—Exemptions from process. All sums paid as bonuses under this chapter shall, when received, be the separate property of the person entitled thereto and shall not be subject to assignment. All bonuses herein provided for shall be exempt from garnishment, attachment or other legal process, except that whenever an application for the bonus shall have been filed with the state auditor, a court, in any case involving the support of minor children, may direct the payment by the state auditor into the registry of the court for such disposition as the court may determine of the amount due or any portion thereof. [1951 c 231 § 1.]

73.32.900 Severability—1949 c 180. If any section or provision of this chapter shall for any reason be held invalid, such decision shall not invalidate the remaining portions of this chapter. [1949 c 180 § 13; no RRS.]

73.32.910 Construction—1949 c 180. This measure shall not be construed as duplicating any payment or tax which may be provided for or imposed by any operative provision of initiative measure No. 169. It is intended to supplement and replace such portions thereof as may be inoperative because of constitutional defects and shall not be construed as amending or repealing said initiative. [1949 c 180 § 14; Rem. Supp. 1949 § 10747m.]

Reviser's note: Concerning Initiative Measure No. 169, see *Gilman v. State Tax Commission*, 32 Wn. (2d) 481.

Chapter 73.33 VETERANS' BONUS—1955 ACT

Sections	
73.33.010	Declaration of policy.
73.33.020	Compensation authorized—Amount and to whom payable.
73.33.030	Persons disqualified.
73.33.040	Applications for compensation—War veterans' compensation fund.
73.33.050	Compensation to mentally incompetent persons—To whom payable.
73.33.060	Forms—Payment of administrative expense—Agents of auditor.
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 73.33.900 Severability—1955 c 292.

73.33.010 Declaration of policy. Since the people of the state of Washington have recognized the sacrifices of its sons and daughters in the service of their country during World War II, and having desired to aid them in their return to civil life, did authorize the payment of certain compensation in recognition of such services, and since problems arising out of said conflict threatened to defeat the ideals for which said war was waged and made it necessary for many of our sons to again bear arms for the preservation of justice and peace, it is fitting and proper that we again recognize that service and give that helping hand to those who have given so much to us and have brought so much honor to our great state. [1973 1st ex.s. c 154 § 109; 1955 c 292 § 1.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

73.33.020 Compensation authorized—Amount and to whom payable. There shall be paid to each person who was on active federal service as a member of the armed military or naval forces of the United States between the twenty-seventh day of June, 1950, and the twenty-sixth day of July, 1953, and who for a period of one year immediately prior to the date of his entry into such service, was a bona fide citizen or resident of the state of Washington, for service between said dates, the sum of one hundred dollars for service in excess of eighty-nine days within the continental United States, the sum of one hundred fifty dollars for service in excess of eighty-nine days and less than three hundred sixty-five days where any part of such service was outside the continental limits of the United States, or the sum of two hundred dollars for service in excess of three hundred sixty-four days where any part of such service was outside the continental limits of the United States: *Provided, however,* That persons otherwise eligible who have been continuously in said armed services for a period of five years or more immediately prior to June 27, 1950, shall not be eligible to receive compensation under the terms of this chapter: *Provided further,* That persons who have already received extra compensation or other benefits based upon claimed residence at the time of entry into such active service from any other state or territory shall not be entitled to compensation under this chapter.

In case of the death of any such person prior to June 10, 1955, an equal amount shall be paid to his surviving spouse if not remarried at the time compensation is requested, or in case he left no spouse or in case his spouse has remarried and he has left children, then to his surviving children, or in the event he left no spouse eligible for payment hereunder, or children surviving on June 10, 1955, then to his surviving parent or parents: *Provided, however,* That no such parent who has been

deprived of custody of such child or children by a decree of a court of competent jurisdiction shall be entitled to any compensation under this chapter if the husband of the surviving spouse was either killed in action or died as a result of wounds or disabilities incurred in action during the period covered by this chapter, such spouse, if not remarried at the time compensation is requested, shall be entitled to the largest amount payable hereunder. [1973 1st ex.s. c 154 § 110; 1955 c 292 § 2.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

73.33.030 Persons disqualified. The word "person" as used in RCW 73.33.020 shall not include persons who, during the period of their service, refused on conscientious, political or other grounds to subject themselves to full military discipline and unqualified service or who were separated from such service under conditions other than honorable, and who have not subsequently been officially restored to an honorable status, and such persons shall not be entitled to the benefits of this chapter: *Provided,* That the word "person" as used in RCW 73.33.020 shall include those persons with honorable discharge who claimed exemptions from combatant training and service by reason of religious training and belief and whose claims were sustained under authority of the selective training and service act of 1940 and executive order No. 8606, but who were inducted into the armed forces and assigned to non-combatant service and who did not otherwise refuse to subject themselves to full military discipline and unqualified service. [1955 c 292 § 3.]

Benefits, preferences, etc., limited to persons subject to full, continuous military control: RCW 73.04.090.

73.33.040 Applications for compensation—War veterans' compensation fund. All disbursements required by this chapter, for compensation shall be made upon the presentation of a certificate upon a form to be prescribed by the state auditor. Such form shall be duly verified by the claimant under oath, and shall set forth his name, residence at the time of entry into the service, date of enlistment, induction, or entry upon active federal service, beginning and ending dates of overseas service, date of discharge or release from active federal service, or if the claimant has not been released at the time of application, a statement by competent military authority that the claimant during the period for which compensation is claimed did not refuse to subject himself to full military discipline and unqualified service, and that he has not been separated from service under circumstances other than honorable.

The state auditor may require such further information to be included in such certificate as he deems necessary to enable him to determine the eligibility of applicants. Such certificate shall be presented to the state auditor or his representative, together with evidence of honorable service satisfactory to the state auditor.

The state auditor shall draw warrants in payment of such compensation claims against the war veterans'

compensation fund, which has heretofore been established in the state treasury. Claims for such compensation may be filed after the *effective date of this chapter but no payments shall be made prior to January 2, 1956.

The state auditor may make such reasonable requirements for applications as are necessary to prevent fraud or the payment of compensation to persons not entitled thereto. [1955 c 292 § 4.]

*Reviser's note: Effective date of this chapter was midnight, June 8, 1955; see preface 1955 session laws.

73.33.050 Compensation to mentally incompetent persons—To whom payable. Where compensation is payable under this chapter to any person who is mentally incompetent at the time application is made, said compensation may be paid to any guardian, committee, conservator, or curator duly appointed, pursuant to the laws of the state of residence of said incompetent to control and manage the person and/or estate of the incompetent, or such compensation may be paid to any chief officer of any state or federal institution having custody of such incompetent: *Provided, however,* The chief officer of any state or federal institution shall use any compensation received pursuant to this section for the personal benefit of the incompetent, exclusive of care and maintenance.

The guardian, committee, conservator, curator, chief officer or person in charge shall make application for the incompetent's compensation upon the form regularly provided for such purpose pursuant to RCW 73.33.040, and in addition, shall certify under oath that the applicant is the guardian, committee, conservator, curator, chief officer, or person in charge as above set forth, and shall further certify that the compensation received shall be used for the personal benefit of the incompetent as provided herein and in accord with the laws applicable to the administration of their office.

Any compensation paid upon the basis of the above certification shall be complete settlement and satisfaction of any claim made pursuant to the provisions of this chapter as if made to a person not incompetent. [1955 c 292 § 5.]

73.33.060 Forms—Payment of administrative expense—Agents of auditor. The state auditor shall furnish free of charge upon the application therefor the necessary forms upon which applications may be made and may establish at different points within the state offices at which there shall be kept on file for the use of persons covered by this chapter a sufficient number of certificate forms, so that there is no delay in the payment of compensation. The state auditor may authorize the county auditor or county clerk, or both, of any county of the state to act for him in receiving such applications, and shall furnish them with the proper forms to enable them to accept such applications. The state auditor shall procure such printing, office supplies and equipment and employ such persons as may be necessary to properly carry out the provisions of this chapter. All expenses incurred by him in the administration of

this chapter shall be paid by warrants drawn upon the war veterans' compensation fund. [1955 c 292 § 6.]

73.33.070 Executive officer of veterans' rehabilitation council to assist auditor. The executive officer of the veterans' rehabilitation council shall advise with and assist the state auditor in the performance of the duties of the auditor under this chapter, and when so called upon, the executive officer shall employ such persons and incur such expenses as may be necessary, such expenses to be paid by warrant drawn upon the war veterans' compensation fund. [1955 c 292 § 7.]

73.33.080 Warrants may be issued in anticipation of sale of bonds. The state auditor may, in his discretion, issue warrants under the provisions of this chapter in anticipation of the sale of the bonds herein authorized. [1955 c 292 § 8.]

73.33.090 Funds from which compensation and expenses are payable—Appropriation. The money not yet expended arising from the sale of bonds previously authorized and credited to the special fund known as the war veterans' compensation fund, pursuant to chapter 73.32 RCW, and chapter 180, Laws of 1949, as amended, together with the proceeds of the bonds authorized and not yet sold, as shall remain after the payment of World War II bonuses in said chapter provided shall be, and the same are hereby made available for the payment of the compensation herein authorized, and for any and all expenses necessary to carry out the provisions of this chapter, and the appropriation in said chapter made (eighty million dollars) shall be, and the same is, hereby confirmed as appropriated to complete all payments made under both the chapter authorizing the compensation to veterans of World War II and the compensation herein set forth. [1955 c 292 § 9.]

73.33.100 Penalty for false claims, representations. Any person who with intent to defraud, subscribes to any false oath or makes any false representation, either in the execution of the certificates provided for by this chapter, or who with intent to defraud, presents to the state auditor or any other officer any certificate for the purpose of obtaining funds provided by this chapter, which do not in fact belong to such person, or makes any false representation in connection with obtaining any funds under the terms of this chapter, shall be guilty of a felony. [1955 c 292 § 10.]

73.33.110 Free official service—Discounting certificates—Penalty. No charge shall be made by any agent, notary public, or attorney for any service in connection with filing an application to obtain the allowance provided for by this chapter, and no person shall, for a consideration, discount or attempt to discount, or for a consideration, advance money upon any certificate or certificates issued pursuant to this chapter. Any violation of this section shall be a gross misdemeanor. [1955 c 292 § 11.]

73.33.120 Terminal dates for filing, processing applications. Neither the state auditor nor his authorized agents shall accept any certificate presented for the purpose of obtaining the benefits of this act after twelve o'clock noon on December 31, 1959, nor shall he draw any warrant for the payment of any compensation authorized by this chapter unless a formal application has been filed on or before the hour and date set forth above.

The state auditor and his authorized agents shall have until December 31, 1959, to process all applications filed pursuant to this chapter and microfilm all records pertaining thereto. [1959 c 147 § 1; 1955 c 292 § 12.]

73.33.900 Severability—1955 c 292. If any section or provision of this chapter shall for any reason be held invalid, such decision shall not invalidate the remaining portions of this chapter. [1955 c 292 § 13.]

Chapter 73.34

VETERANS' BONUS—1972 ACT

Sections

73.34.010	Purpose—Recognition.
73.34.020	Compensation authorized—Amount and to whom payable—Election to receive tuition, fees, etc., from educational institutions in lieu of bonus.
73.34.030	"Person" defined.
73.34.040	Certificate or claim form—Contents—Application procedures—War veterans' compensation fund.
73.34.050	Compensation to physically or mentally incompetent persons—To whom payable.
73.34.060	Forms—Administrative expense—Agents of treasurer.
73.34.070	Additional cigarette tax imposed—Disposition of revenues from cigarette taxes.
73.34.080	Penalty for false claims, representations.
73.34.090	Free official service—Discounting certificates—Penalty.
73.34.100	Advice and assistance of veterans' rehabilitation council.
73.34.110	Death benefit.
73.34.120	Terminal dates for filing claims and issuing warrants.
73.34.900	Severability—1972 ex.s. c 154.

Reviser's note: Throughout chapter 73.34 RCW the term "this 1972 amendatory act" has been changed to "this chapter." This 1972 amendatory act [1972 ex.s. c 154] consists of chapter 73.34 RCW and also RCW 73.32.130, as amended by 1972 ex.s. c 154 § 7.

73.34.010 Purpose—Recognition. Since the people of the state of Washington have recognized the sacrifices of its sons in the service of their country during World War I, World War II and subsequently in the Korean conflict, and having desired to aid them in their return to civil life, did authorize the payment of certain compensation in recognition of such services, and since problems arising out of said conflicts threaten to defeat the ideals for which said battles were waged and make it necessary for many of our sons to once again bear arms for the preservation of justice and peace, it is fitting and proper that we again recognize that service and give that helping hand to those who have given and are giving so much to us and have brought and are bringing so much honor to our great state.

The legislature in authorizing this compensation recognizes that all prior bonds issued for compensation of those veterans of World War II and the Korean conflict will be fully retired during the year 1972 and that taxes

upon cigarettes referred to in RCW 82.24.020 provide ample funds to retire any new veterans' bonus payment as provided for in this chapter without an added burden of taxation upon the citizens of this state. [1972 ex.s. c 154 § 1.]

Appropriation: "For the purpose of carrying out the provisions of this 1972 amendatory act, there is hereby appropriated from the war veterans' compensation fund the sum of nine million dollars, or so much thereof as is required to meet the annual obligations, which shall be used for the payment of the compensation provided in this 1972 amendatory act, and for paying the expenses of the administration thereof: *Provided*, That not more than two hundred thousand dollars of such amount shall be used as administrative expenses for the biennium ending June 30, 1973 and the state treasurer shall issue no warrants for payment of administrative expenses in excess of this amount." [1972 ex.s. c 154 § 8.]

73.34.020 Compensation authorized—Amount and to whom payable—Election to receive tuition, fees, etc., from educational institutions in lieu of bonus. (1) There shall be paid to each person who has been on active federal service as a member of the armed military or naval forces of the United States between a period commencing August 5, 1964, and ending on such date as shall thereafter be determined by presidential proclamation or concurrent resolution of the congress terminating the conflict involving United States forces battling in South Viet Nam, or in the case of a reduction in hostilities, on a date determined by proclamation of the governor, and who for a period of one year immediately prior to the date of his entry into such service, was a bona fide citizen or resident of the state of Washington, and received the Viet Nam Service Medal, the sum of two hundred and fifty dollars for service between said dates: *Provided, however*, That persons otherwise eligible who have been continuously in said armed services for a period of five years or more immediately prior to August 5, 1964, shall not be eligible to receive compensation under the terms of this chapter: *Provided further*, That persons who have already received extra compensation or other benefits based upon claimed residence at the time of entry into such active service from any other state or territory shall not be entitled to compensation under this chapter: *And provided further*, That no person shall be eligible to receive compensation under this chapter having prior thereto applied for and received compensation hereunder.

(2) In lieu of awaiting receipt of the stated money amounts as provided in subsection (1) above, any qualified person may elect to receive credit for tuition, incidental fees or other fees in such amount at any state institution of higher education, including community colleges and vocational technical institutions, or at private institutions of higher education within the state, such credit to be immediately available upon the processing of such person's claim for a bonus under this chapter; institutions of higher education entering into this program under this chapter shall be reimbursed at such time as the bonus payment would otherwise be made.

(3) In case of the death of any such person prior to said termination date as referred to in subsection (1) above, or at such time as such person would have been

eligible for benefits hereunder, an equal amount shall be paid to his surviving widow if not remarried at the time compensation is requested, or in case he left no widow or in case his widow remarried and he has left children, then to his surviving children, or in the event he left no widow eligible for payment hereunder, or children surviving on such date, then to his surviving parent or parents: *Provided, however,* That no such parent who has been deprived of custody of such child by a decree of a court of competent jurisdiction shall be entitled to any compensation under this chapter.

(4) It is the purpose of the legislature that benefits payable under the provisions of this chapter shall be comparable to those paid to veterans under former laws, the increase in dollar amount herein reflecting an approximation of the increase in the cost of living as indicated by the consumer price index of the United States Department of Labor, Bureau of Labor Statistics. [1972 ex.s. c 154 § 2.]

73.34.030 "Person" defined. The word "person" as used in RCW 73.34.020 shall not include persons who, during the period of their service, refused on conscientious, political or other grounds to subject themselves to full military discipline and unqualified service or who were separated from such service under conditions other than honorable, and who have not subsequently been officially restored to an honorable status, and such persons shall not be entitled to the benefits of this chapter: *Provided,* That the word "person" as used in RCW 73.34.020 shall include those persons with honorable discharge who claimed exemptions from combatant training and service by reason of religious training and belief and whose claims were sustained under authority of the selective training and service act of 1940 and executive order No. 8606, but who were inducted into the armed forces and assigned to noncombatant service and who did not otherwise refuse to subject themselves to full military discipline and unqualified service. [1972 ex.s. c 154 § 3.]

73.34.040 Certificate or claim form—Contents—Application procedures—War veterans' compensation fund. All disbursements made under this chapter for compensation shall be made upon the presentation of a certificate or claim form to be prescribed by the state treasurer.

Such form for persons applying for benefits shall be duly verified by the claimant under oath, and shall set forth his name, residence at the time of entry into the service, date of enlistment, induction, or entry upon active federal service, beginning and ending dates of overseas service, date of discharge or release from active federal service, or if the claimant has not been released at the time of application, a statement by a competent military authority that the claimant during the period for which compensation is claimed did not refuse to subject himself to full military discipline and unqualified service, and that he has not been separated from service under circumstances other than honorable.

The state treasurer may require such further information to be included in such certificate as he deems necessary to enable him to determine the eligibility of applicants.

Such certificate shall be presented to the state treasurer or his representative, together with evidence of honorable service satisfactory to the state treasurer.

The claim for institutions seeking reimbursement under RCW 73.34.020(2) shall contain such information as the treasurer shall deem necessary to determine the authenticity thereof.

The state treasurer shall draw warrants in payment of such compensation claims against the war veterans' compensation fund, which has heretofore been established in the state treasury. Claims for such compensation may be filed after May 23, 1972 but no payments shall be made prior to January 2, 1973.

The state treasurer may make such reasonable requirements for application procedure as are necessary to prevent fraud or the payment of compensation to persons not entitled thereto. [1972 ex.s. c 154 § 4.]

73.34.050 Compensation to physically or mentally incompetent persons—To whom payable. Where compensation is payable under this chapter to any person who is physically or mentally incompetent at the time application is made, said compensation may be paid to any guardian, committee, conservator, or curator duly appointed, pursuant to the laws of the state of residence of said incompetent to control and manage the person and/or estate of the incompetent, or such compensation may be paid to any chief officer of any state or federal institution having custody of such incompetent: *Provided, however,* The chief officer of any state or federal institution shall use any compensation received pursuant to this section for the personal benefit of the incompetent, exclusive of care and maintenance.

The guardian, committee, conservator, curator, chief officer or person in charge shall make application for the incompetent's compensation upon the form regularly provided for such purpose pursuant to RCW 73.34.040, and in addition, shall certify under oath that the applicant is the guardian, committee, conservator, curator, chief officer, or person in charge as above set forth, and shall further certify that the compensation received shall be used for the personal benefit of the incompetent as provided herein and in accord with the laws applicable to the administration of their office.

Any compensation paid upon the basis of the above certification shall be complete settlement and satisfaction of any claim made pursuant to the provisions of this chapter as if made to a person not incompetent. [1972 ex.s. c 154 § 5.]

73.34.060 Forms—Administrative expense—Agents of treasurer. The state treasurer shall furnish free of charge upon the application therefor certificates or claim forms upon which applications may be made and may establish at different points within the state offices at which there shall be kept on file for the use of persons covered by this chapter a sufficient number of such certificates, so that there is no unnecessary delay in the

payment of compensation. The state treasurer may authorize the county auditor or county clerk, or both, of any county of the state to act for him in receiving such certificates, and shall furnish them with sufficient certificates to enable them to accept the same. The state treasurer shall procure such printing, office supplies and equipment and employ such persons as may be necessary to properly carry out the provisions of this chapter. All expenses incurred by him in the administration of this chapter shall be paid by warrants drawn upon the war veterans' compensation fund. [1972 ex.s. c 154 § 6.]

73.34.070 Additional cigarette tax imposed—Disposition of revenues from cigarette taxes. See RCW 73.32.130.

73.34.080 Penalty for false claims, representations. Any person who with intent to defraud, subscribes to any false oath or makes any false representation, either in the execution of the certificates or claim forms provided for by this chapter, or who with intent to defraud, presents to the state treasurer, or any other state or county officer, any certificate or claim form for the purpose of obtaining funds provided by this chapter, which do not in fact belong to such person, or makes any false representation in connection with obtaining any funds under the terms of this chapter, shall be guilty of a felony. [1972 ex.s. c 154 § 9.]

73.34.090 Free official service—Discounting certificates—Penalty. No charge shall be made by any agent, notary public, or attorney for any service in connection with obtaining a certificate to obtain the allowance provided for by this chapter, and no person shall, for a consideration, discount or attempt to discount, or for a consideration, advance money upon any certificate or certificates issued pursuant to this chapter. Any violation of this section shall be a gross misdemeanor. [1972 ex.s. c 154 § 10.]

73.34.100 Advice and assistance of veterans' rehabilitation council. The executive officer of the veterans' rehabilitation council shall advise with and assist the state treasurer in the performance of the duties of the treasurer under this chapter, and when so called upon, the executive officer shall employ such persons and incur such expenses as may be necessary, such expenses to be paid by warrant drawn upon the war veterans' compensation fund. [1972 ex.s. c 154 § 11.]

73.34.110 Death benefit. Upon the death of any person qualified to receive compensation pursuant to this chapter or who would have been qualified to receive compensation except for death occurring while serving in federal service as a member of the armed military or naval forces of the United States, there shall be paid to his widow, parent, child, next of kin or other person assuming responsibility or having the duty to provide for his burial, the sum of two hundred fifty dollars to aid in defraying funeral and other burial costs. Payment shall be made, after application therefor, in the same manner as is provided in this chapter for

payment of compensation. The state treasurer shall promulgate such rules and regulations and provide such procedures as may be necessary to properly administer the provisions of this section.

Any payment under this section shall be deemed and construed to be a part of the term "compensation" as used in this chapter and shall be made from the war veterans' compensation fund. [1972 ex.s. c 154 § 12.]

73.34.120 Terminal dates for filing claims and issuing warrants. No certificate or claim for compensation under this chapter shall be accepted after March 28, 1975, nor shall any warrant be drawn for the payment of any compensation authorized by this chapter unless a formal application has been filed on the day set forth above.

The state treasurer and his authorized agents shall have until March 28, 1976, to process all applications filed pursuant to this chapter and microfilm all records pertaining thereto. [1974 1st ex.s. c 173 § 2; 1972 ex.s. c 154 § 13.]

73.34.900 Severability—1972 ex.s. c 154. If any section or provision of this 1972 amendatory act shall for any reason be held invalid, such decision shall not invalidate the remaining portions of this act. [1972 ex.s. c 154 § 14.]

Chapter 73.36

UNIFORM VETERANS' GUARDIANSHIP ACT

Sections	
73.36.010	Terms defined.
73.36.020	Administrator party in interest in guardianship proceedings—Notice.
73.36.030	Appointment of guardian—Necessary when.
73.36.040	Guardian—Number of wards permitted.
73.36.050	Guardian—Appointment—Contents of petition.
73.36.060	Guardian for minor—Appointment—Prima facie evidence.
73.36.070	Guardian for incompetent—Appointment—Prima facie evidence.
73.36.080	Notice of petition.
73.36.090	Guardian's bond.
73.36.100	Accounting by guardian—Copies of all proceedings to be furnished administration—Hearings.
73.36.110	Failure to account—Penalties.
73.36.120	Compensation of guardian.
73.36.130	Investment of funds—Procedure.
73.36.140	Use of funds—Procedure.
73.36.150	Purchase of real estate—Procedure.
73.36.155	Public records—Free copies.
73.36.160	Discharge of guardian—Final account.
73.36.165	Commitment to veterans administration or other federal agency.
73.36.170	Application of chapter to other guardianships of veterans.
73.36.180	Construction of chapter—Uniformity.
73.36.190	Short title.

Guardianship, generally: Chapters 11.88, 11.92 RCW.

73.36.010 Terms defined. As used in this chapter:

"Person" means an individual, a partnership, a corporation or an association.

"Veterans administration" means the veterans administration, its predecessors or successors.

"Income" means moneys received from the veterans administration and revenue or profit from any property wholly or partially acquired therewith.

"Estate" means income on hand and assets acquired partially or wholly with "income".

"Benefits" means all moneys paid or payable by the United States through the veterans administration.

"Administrator" means the administrator of veterans affairs of the United States or his successor.

"Ward" means a beneficiary of the veterans administration.

"Guardian" means any fiduciary for the person or estate of a ward. [1951 c 53 § 1.]

73.36.020 Administrator party in interest in guardianship proceedings—Notice. The administrator shall be a party in interest in any proceeding for the appointment or removal of a guardian or for the removal of the disability of minority or mental incapacity of a ward, and in any suit or other proceeding affecting in any manner the administration by the guardian of the estate of any present or former ward whose estate includes assets derived in whole or in part from benefits heretofore or hereafter paid by the veterans administration. Not less than fifteen days prior to hearing in such matter notice in writing of the time and place thereof shall be given by mail (unless waived in writing) to the office of the veterans administration having jurisdiction over the area in which any such suit or any such proceeding is pending. [1951 c 53 § 2.]

73.36.030 Appointment of guardian—Necessary when. Whenever, pursuant to any law of the United States or regulation of the veterans administration, it is necessary, prior to payment of benefits, that a guardian be appointed, the appointment may be made in the manner hereinafter provided. [1951 c 53 § 3.]

73.36.040 Guardian—Number of wards permitted. No person other than a bank or trust company shall be guardian of more than five wards at one time, unless all the wards are members of one family. Upon presentation of a petition by an attorney of the veterans administration or other interested person, alleging that a guardian is acting in a fiduciary capacity for more than five wards as herein provided and requesting his discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from such guardian and shall discharge him from guardianships in excess of five and forthwith appoint a successor. [1951 c 53 § 4.]

73.36.050 Guardian—Appointment—Contents of petition. (1) A petition for the appointment of a guardian may be filed by any relative or friend of the ward or by any person who is authorized by law to file such a petition. If there is no person so authorized or if the person so authorized refuses or fails to file such a petition within thirty days after mailing of notice by the veterans administration to the last known address of the person, if any, indicating the necessity for the same, a

petition for appointment may be filed by any resident of this state.

(2) The petition for appointment shall set forth the name, age, place of residence of the ward, the name and place of residence of the nearest relative, if known, and the fact that the ward is entitled to receive benefits payable by or through the veterans administration and shall set forth the amount of moneys then due and the amount of probable future payments.

(3) The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward and the name, age, relationship, if any, occupation and address of the proposed guardian and if the nominee is a natural person, the number of wards for whom the nominee is presently acting as guardian. Notwithstanding any law as to priority of persons entitled to appointment, or the nomination in the petition, the court may appoint some other individual or a bank or trust company as guardian, if the court determines it is for the best interest of the ward.

(4) In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent by the veterans administration on examination in accordance with the laws and regulations governing the veterans administration. [1951 c 53 § 5.]

73.36.060 Guardian for minor—Appointment—Prima facie evidence. Where a petition is filed for the appointment of a guardian for a minor, a certificate of the administrator or his authorized representative, setting forth the age of such minor as shown by the records of the veterans administration and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the veterans administration shall be prima facie evidence of the necessity for such appointment. [1951 c 53 § 6.]

73.36.070 Guardian for incompetent—Appointment—Prima facie evidence. Where a petition is filed for the appointment of a guardian for a mentally incompetent ward, a certificate of the administrator or his duly authorized representative, that such person has been rated incompetent by the veterans administration on examination in accordance with the laws and regulations governing such veterans administration and that the appointment of a guardian is a condition precedent to the payment of any moneys due such ward by the veterans administration, shall be prima facie evidence of the necessity for such appointment. [1951 c 53 § 7.]

73.36.080 Notice of petition. Upon the filing of a petition for the appointment of a guardian under this chapter, notice shall be given to the ward, to such other persons, and in such manner as is provided by the general law of this state, and also to the veterans administration as provided by this chapter. [1951 c 53 § 8.]

73.36.090 Guardian's bond. (1) Upon the appointment of a guardian, he shall execute and file a bond to be approved by the court in an amount not less than the estimated value of the personal estate and anticipated income of the ward during the ensuing two years,

except in cases where banks or trust companies are appointed as guardian and no bond is required by the general state law. The bond shall be in the form and be conditioned as required of guardians appointed under the general guardianship laws of this state. The court may from time to time require the guardian to file an additional bond.

(2) Where a bond is tendered by a guardian with personal sureties, there shall be at least two such sureties and they shall file with the court a certificate under oath which shall describe the property owned, both real and personal, and shall state that each is worth the sum named in the bond as the penalty thereof over and above all his debts and liabilities and the aggregate of other bonds in which he is principal or surety and exclusive of property exempt from execution. The court may require additional security or may require a corporate surety bond, the premium thereon to be paid from the ward's estate. [1951 c 53 § 9.]

Guardianship, generally: Chapters 11.88 and 11.92 RCW.

73.36.100 Accounting by guardian—Copies of all proceedings to be furnished administration—Hearings.

(1) Every guardian, who has received or shall receive on account of his ward any money or other thing of value from the veterans administration, at the expiration of two years from date of his appointment, and every two years thereafter on the anniversary date of his appointment, or as much oftener as the court may require, shall file with the court a full, true and accurate account under oath of all moneys or other things of value received by him, all earnings, interest or profits derived therefrom, and all property acquired therewith and of all disbursements therefrom, and showing the balance thereof in his hands at the date of the account and how invested. Each year when not required to file an account with the court, the guardian shall file an account with the proper office of the veterans administration. If the interim account be not filed with the veterans administration, or, if filed, shall be unsatisfactory, the court shall upon receipt of notice thereof from the veterans administration require the guardian forthwith to file an account which shall be subject in all respects to the next succeeding paragraphs. Any account filed with the veterans administration and approved by the chief attorney thereof may be filed with the court and be approved by the court without hearing, unless a hearing thereon be requested by some party in interest.

(2) The guardian, at the time of filing any account with the court or veterans administration shall exhibit all securities or investments held by him to an officer of the bank or other depository wherein said securities or investments are held for safekeeping or to an authorized representative of the corporation which is surety on his bond, or to the judge or clerk of a court of record in this state, or upon request of the guardian or other interested party, to any other reputable person designated by the court, who shall certify in writing that he has examined the securities or investments and identified them with those described in the account and shall note any omissions or discrepancies. If the depository is the guardian, the certifying officer shall not be the officer

verifying the account. The guardian may exhibit the securities or investments to the judge of the court, who shall endorse on the account and copy thereof, a certificate that the securities or investments shown therein as held by the guardian were each in fact exhibited to him and that those exhibited to him were the same as those in the account and noting any omission or discrepancy. The certificate, and the certificate of an official of the bank in which are deposited any funds for which the guardian is accountable, showing the amount on deposit, shall be prepared and signed in duplicate and one of each shall be filed by the guardian with his account.

(3) At the time of filing in the court any account, a certified copy thereof and a signed duplicate of each certificate filed with the court shall be sent by the guardian to the office of the veterans administration having jurisdiction over the area in which such court is located. A duplicate signed copy or a certified copy of any petition, motion or other pleading pertaining to an account, or to any matter other than an account, and which is filed in the guardianship proceedings or in any proceedings for the purpose of removing the disability of minority or mental incapacity, shall be furnished by the persons filing the same to the proper office of the veterans administration. Unless hearing be waived in writing by the attorney of the veterans administration and by all other persons, if any, entitled to notice, the court shall fix a time and place for the hearing on the account, petition, motion or other pleading, not less than fifteen days nor more than sixty days from the date same is filed, unless a different available date be stipulated in writing. Unless waived in writing, written notice of the time and place of hearing shall be given the veterans administration office concerned and to the guardian and any others entitled to notice, not less than fifteen days prior to the date fixed for the hearing. The notice may be given by mail, in which event it shall be deposited in the mails not less than fifteen days prior to said date. The court or clerk thereof, shall mail to said veterans administration office a copy of each order entered in any guardianship proceeding wherein the administrator is an interested party.

(4) If the guardian is accountable for property derived from sources other than the veterans administration, he shall be accountable as is or may be required under the applicable law of this state pertaining to the property of minors or persons of unsound mind who are not beneficiaries of the veterans administration, and as to such other property shall be entitled to the compensation provided by such law. The account for other property may be combined with the account filed in accordance with this section. [1951 c 53 § 10.]

73.36.110 Failure to account—Penalties. If any guardian shall fail to file with the court any account as required by this chapter, or by an order of the court, when any account is due or within thirty days after citation issues and provided by law, or shall fail to furnish the veterans administration a true copy of any account, petition or pleading as required by this chapter, such failure may in the discretion of the court be

ground for his removal, in addition to other penalties provided by law. [1951 c 53 § 11.]

73.36.120 Compensation of guardian. Compensation payable to guardians shall be based upon services rendered and shall not exceed five percent of the amount of moneys received during the period covered by the account, except that the court may allow a fee of not exceeding twenty-five dollars per year, as a minimum fee, upon the approval of the chief attorney for the veterans administration. In the event of extraordinary services by any guardian, the court, upon petition and hearing thereon may authorize reasonable additional compensation therefor. A copy of the petition and notice of hearing thereon shall be given the proper office of the veterans administration in the manner provided in the case of hearing on a guardian's account or other pleading. No commission or compensation shall be allowed on the moneys or other assets received from a prior guardian nor upon the amount received from liquidation of loans or other investments. [1951 c 53 § 12.]

73.36.130 Investment of funds—Procedure. Every guardian shall invest the surplus funds of his ward's estate in such securities or property as authorized under the laws of this state but only upon prior order of the court; except that the funds may be invested, without prior court authorization, in direct unconditional interest-bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States. A signed duplicate or certified copy of the petition for authority to invest shall be furnished the proper office of the veterans administration, and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account. [1951 c 53 § 13.]

73.36.140 Use of funds—Procedure. A guardian shall not apply any portion of the income or the estate for the support or maintenance of any person including the ward, the spouse and the minor children of the ward, except upon petition to and prior order of the court after a hearing. A signed duplicate or certified copy of said petition shall be furnished the proper office of the veterans administration and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account or other pleading. [1951 c 53 § 14.]

73.36.150 Purchase of real estate—Procedure. (1) The court may authorize the purchase of the entire fee simple title to real estate in this state in which the guardian has no interest, but only as a home for the ward, or to protect his interest, or (if he is not a minor) as a home for his dependent family. Such purchase of real estate shall not be made except upon the entry of an order of the court after hearing upon verified petition. A copy of the petition shall be furnished the proper office of the veterans administration and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account.

(2) Before authorizing such investment the court shall require written evidence of value and of title and of the advisability of acquiring such real estate. Title shall be taken in the ward's name. This section does not limit the right of the guardian on behalf of his ward to bid and to become the purchaser of real estate at a sale thereof pursuant to decree of foreclosure of lien held by or for the ward, or at a trustee's sale, to protect the ward's right in the property so foreclosed or sold; nor does it limit the right of the guardian, if such be necessary to protect the ward's interest and upon prior order of the court in which the guardianship is pending, to agree with cotenants of the ward for a partition in kind, or to purchase from cotenants the entire undivided interests held by them, or to bid and purchase the same at a sale under a partition decree, or to compromise adverse claims of title to the ward's realty. [1951 c 53 § 15.]

73.36.155 Public records—Free copies. When a copy of any public record is required by the veterans administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans administration, the official custodian of such public record shall without charge provide the applicant for such benefits or any person acting on his behalf or the authorized representative of the veterans administration with a certified copy of such record. [1951 c 53 § 16. Formerly RCW 73.04.025.]

73.36.160 Discharge of guardian—Final account. In addition to any other provisions of law relating to judicial restoration and discharge of guardian, a certificate by the veterans administration showing that a minor ward has attained majority, or that an incompetent ward has been rated competent by the veterans administration upon examination in accordance with law shall be prima facie evidence that the ward has attained majority, or has recovered his competency. Upon hearing after notice as provided by this chapter and the determination by the court that the ward has attained majority or has recovered his competency, an order shall be entered to that effect, and the guardian shall file a final account. Upon hearing after notice to the former ward and to the veterans administration as in case of other accounts, upon approval of the final account, and upon delivery to the ward of the assets due him from the guardian, the guardian shall be discharged and his sureties released. [1951 c 53 § 17.]

73.36.165 Commitment to veterans administration or other federal agency. (1) Whenever, in any proceeding under the laws of this state for the commitment of a person alleged to be of unsound mind or otherwise in need of confinement in a hospital or other institution for his proper care, it is determined after such adjudication of the status of such person as may be required by law that commitment to a hospital for mental disease or other institution is necessary for safekeeping or treatment and it appears that such person is eligible for care or treatment by the veterans administration or other agency of the United States government, the

court, upon receipt of a certificate from the veterans administration or such other agency showing that facilities are available and that such person is eligible for care or treatment therein, may commit such person to said veterans administration or other agency. The person whose commitment is sought shall be personally served with notice of the pending commitment proceeding in the manner as provided by the law of this state; and nothing in this chapter shall affect his right to appear and be heard in the proceedings. Upon commitment, such person, when admitted to any hospital operated by any such agency within or without this state shall be subject to the rules and regulations of the veterans administration or other agency. The chief officer of any hospital of the veterans administration or institution operated by any other agency of the United States to which the person is so committed shall with respect to such person be vested with the same powers as superintendents of state hospitals for mental diseases within this state with respect to retention of custody, transfer, parole or discharge. Jurisdiction is retained in the committing or other appropriate court of this state at any time to inquire into the mental condition of the person so committed, and to determine the necessity for continuance of his restraint, and all commitments pursuant to this chapter are so conditioned.

(2) The judgment or order of commitment by a court of competent jurisdiction of another state or of the District of Columbia, committing a person to the veterans administration, or other agency of the United States government for care or treatment shall have the same force and effect as to the committed person while in this state as in the jurisdiction in which is situated the court entering the judgment or making the order; and the courts of the committing state, or of the District of Columbia, shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of such person, and of determining the necessity for continuance of his restraint; as is provided in subsection (1) of this section with respect to persons committed by the courts of this state. Consent is hereby given to the application of the law of the committing state or district in respect to the authority of the chief officer of any hospital of the veterans administration, or of any institution operated in this state by any other agency of the United States to retain custody, or transfer, parole or discharge the committed person.

(3) Upon receipt of a certificate of the veterans administration or such other agency of the United States that facilities are available for the care or treatment of any person heretofore committed to any hospital for the insane or other institution for the care or treatment of persons similarly afflicted and that such person is eligible for care or treatment, the superintendent of the institution may cause the transfer of such person to the veterans administration or other agency of the United States for care or treatment. Upon effecting any such transfer, the committing court or proper officer thereof shall be notified thereof by the transferring agency. No

person shall be transferred to the veterans administration or other agency of the United States if he be confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of insanity, unless prior to transfer the court or other authority originally committing such person shall enter an order for such transfer after appropriate motion and hearing.

Any person transferred as provided in this section shall be deemed to be committed to the veterans administration or other agency of the United States pursuant to the original commitment. [1951 c 53 § 18. Formerly RCW 71.02.700 through 71.02.720.]

73.36.170 Application of chapter to other guardianships of veterans. The provisions of this chapter relating to surety bonds and the administration of estates of wards shall apply to all "income" and "estate" as defined in RCW 73.36.010 whether the guardian shall have been appointed under this chapter or under any other law of this state, special or general, prior or subsequent to the enactment hereof. [1951 c 53 § 21.]

73.36.180 Construction of chapter—Uniformity. This chapter shall be so construed to make uniform the law of those states which enact it. [1951 c 53 § 19.]

73.36.190 Short title. This chapter may be cited as the "uniform veterans' guardianship act". [1953 c 53 § 20.]

TITLE 74

PUBLIC ASSISTANCE

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Chapter 74.04

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74.04.003 Department of public assistance abolished.
 See RCW 43.20A.500.

74.04.005 Definitions. For the purposes of this title, unless the context indicates otherwise, the following definitions shall apply:

- (1) "Public assistance" or "assistance"—Public aid to persons in need thereof for any cause, including services, medical care, assistance grants, disbursing orders, work relief, general assistance and federal-aid assistance.
- (2) "Department"—The department of public assistance.
- (3) "County office"—The administrative office for one or more counties.
- (4) "Director"—The director of the state department of public assistance.
- (5) "Federal-aid assistance"—The specific categories of assistance for which provision is made in any federal law existing or hereafter passed by which payments are made from the federal government to the state in aid or in respect to payment by the state for public assistance rendered to any category of needy persons, including old age assistance, medical assistance, aid to families with dependent children, aid to the permanently and totally disabled persons, aid to the blind, child welfare services, and any other programs of public assistance for which provision for federal funds or aid may from time to time be made.

(6) "General assistance"—Shall include aid to unemployable persons and unemployed employable persons who are not eligible to receive or are not receiving federal-aid assistance.

(a) Unemployable persons are those persons who by reason of bodily or mental infirmity or other cause are substantially incapacitated from gainful employment.

(b) Unemployed employable persons are those persons who although capable of gainful employment are unemployed.

(7) "Medical indigents"—Are persons without income or resources sufficient to secure necessary medical services.

(8) "Applicant"—Any person who has made a request, or on behalf of whom a request has been made, to any county office for assistance.

(9) "Recipient"—Any person receiving assistance or currently approved to receive assistance at any future date and in addition those dependents whose needs are included in the recipient's grant.

(10) "Requirement"—Items of goods and services included in the state department of public assistance standards of assistance and required by an applicant or recipient to maintain a defined standard of living.

(11) "Resource"—Any asset, tangible or intangible, owned by or available to the applicant at the time of application, which can be applied toward meeting the applicant's need, either directly or by conversion into money or its equivalent: *Provided*, That an applicant may retain the following described resources and not be ineligible for public assistance because of such resources.

(a) A home, which is defined as real property owned and used by an applicant or recipient as a place of residence, together with a reasonable amount of property surrounding and contiguous thereto, which is used by and useful to the applicant. Whenever a recipient shall cease to use such property for residential purposes, either for himself or his dependents, the property shall be considered as income which can be made available to meet need, and if the recipient or his dependents absent themselves from the home for a period of ninety consecutive days such absence, unless due to hospitalization or health reasons, shall raise a presumption of abandonment: *Provided*, That if in the opinion of three physicians the recipient will be unable to return to the home during his lifetime, and the home is not occupied by a spouse or dependent children or disabled sons or daughters, such property shall be considered as income which can be made available to meet need.

(b) Household furnishings and personal clothing used and useful to the person.

(c) Automobile(s) used and useful.

(d) Cash of not to exceed two hundred dollars for a single person or four hundred dollars for a family unit of two, or marketable securities of such value. This maximum shall be increased by twenty-five dollars for each additional member of the family unit.

(e) Life insurance having a cash surrender value.

(f) Other personal property and belongings which are used and useful or which have great sentimental value to the applicant or recipient.

Whenever such person ceases to make use of any of the property specified in items (b), (c) and (f) of this section, the same shall be considered as income available to meet need: *Provided*, That the department may by rule and regulation exempt such personal property and belongings which can be used by the applicant or recipient to decrease his need for public assistance or aid in rehabilitating him or his dependents.

(g) The department shall by rule and regulation fix the ceiling value for the individual or family unit for all property and belongings as defined in items (c), (d) and (e) of this section. In establishing such ceiling, the department shall establish a sliding scale based upon the family size. If an applicant for or recipient of public assistance possesses property and belongings in excess of the ceiling value, such value shall be used in determining the need of the applicant or recipient: *Provided*, That in the determination of need of applicants for or recipients of general assistance no resources or income shall be considered as exempt per se, but the department may by rule and regulation adopt standards which will permit the exemption of the home and personal property and belongings from consideration as an available resource or income when such resources or income are determined to be necessary to the applicant's or recipient's restoration to independence.

(12) "Income"—All appreciable gains in real or personal property (cash or kind) or other assets, which are received by or become available for use and enjoyment by an applicant or recipient after applying for or receiving public assistance: *Provided*, That all necessary expenses that may reasonably be attributed to the earning of income shall be considered in determining net income: *Provided further*, That the department may by rule and regulation exempt income received by an applicant for or recipient of public assistance which can be used by him to decrease his need for public assistance or to aid in rehabilitating him or his dependents, but such exemption shall not, unless otherwise provided in this title, exceed the exemptions of resources granted under this chapter to an applicant for public assistance: *Provided further*, That in determining the amount of assistance to which a recipient of aid to the blind is entitled or to which any dependent of such recipient may be entitled under any category of public assistance, the department is hereby authorized to disregard as a resource or income the first eighty-five dollars per month of any earned income plus one-half of earned income in excess of eighty-five dollars per month and for a period of not in excess of thirty-six months such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the department, as may be necessary for the fulfillment of such plan of such blind recipient who is otherwise eligible for an aid to the blind grant: *Provided further*, That in determining the amount of assistance to which a recipient of aid to families with dependent children is entitled, the department is hereby authorized to disregard as a resource or income (a) with respect to a child who is not a full time employee and who is a full time or part time student attending a school, college, or university, or a course of

vocational or technical training designed to fit him for gainful employment, all of the earned income of such child; and (b) with respect to any other dependent child, adult, or other person in the home whose needs are taken into account in making such determination, the first thirty dollars of the total of their earned income for such month and one-third of the remainder: *Provided further*, The department may permit the above exemption of earnings of a child to be retained by such child to cover the cost of special future identifiable needs even though the total exceeds the exemptions or resources granted to applicants of public assistance, but consistent with federal requirements: *Provided further*, That in determining the amount of assistance to which a recipient of old age assistance is entitled, the department is hereby authorized to disregard as a resource or income the first twenty dollars per month of any earned income plus one-half of additional earnings up to eighty dollars of such recipient who is otherwise eligible for an old age assistance grant; but the total amount of earnings or other income if accumulated shall not, when added to the amount of cash or marketable securities exempted under (d) of subsection (11) of this section, exceed the total amounts exempted under that subsection for a family unit: *Provided further*, That a recipient of aid to the blind may accumulate without penalty from such exempt income, an amount not to exceed the maximum value of personal property as established by the department pursuant to this section less other cash, marketable securities, cash surrender value of insurance and/or car held by such recipient. In formulating rules and regulations pursuant to this chapter the department shall define "earned income" in such a manner as to meet with the approval of the department of health, education and welfare: and *Provided further*, That all resources and income not specifically exempted, and any income or other economic benefit derived from the use of, or appreciation in value of, exempt resources, shall be considered in determining the need of an applicant or recipient of public assistance.

(13) "Need"—The difference between the applicant's or recipient's cost of requirements for himself and the dependent members of his family, as measured by the standards of the department, and value of all non-exempt resources and nonexempt net income received by or available to the applicant or recipient and the dependent members of his family.

(14) In the construction of words and phrases used in this title, the singular number shall include the plural, the masculine gender shall include both the feminine and neuter genders and the present tense shall include the past and future tenses, unless the context thereof shall clearly indicate to the contrary. [1969 ex.s. c 173 § 1; 1965 ex.s. c 2 § 1; 1963 c 228 § 1; 1961 c 235 § 1; 1959 c 26 § 74.04.005. Prior: (i) 1947 c 289 § 1; 1939 c 216 § 1; Rem. Supp. 1947 § 10007-101a. (ii) 1957 c 63 § 1; 1953 c 174 § 17; 1951 c 122 § 1; 1951 c 1 § 3; 1949 c 6 § 3; Rem. Supp. 1949 § 9998-33c.]

Powers, duties and functions of director of public assistance transferred to secretary of social and health services or his designee: RCW 43.20A.190.

74.04.006 Contract of sale of property—Availability as a resource or income—Establishment. The department may establish, by rule and regulation, the availability of a contract of sale of real or personal property as a resource or income as defined in RCW 74.04.005. [1973 1st ex.s. c 49 § 2.]

74.04.011 Director's authority—Personnel. The director of public assistance shall be the administrative head and appointing authority of the department of public assistance and he shall have the power to and shall employ such assistants and personnel as may be necessary for the general administration of the department: *Provided*, That such employment is in accordance with the rules and regulations of the state merit system. The director shall through and by means of his assistants and personnel exercise such powers and perform such duties as may be prescribed by the public assistance laws of this state.

The authority vested in the director as appointing authority may be delegated by the director or his designee to any suitable employee of the department. [1969 ex.s. c 173 § 4; 1959 c 26 § 74.04.011. Prior: 1953 c 174 § 3. (i) 1937 c 111 § 3; RRS § 10785-2. (ii) 1937 c 111 § 5; RRS § 10785-4.]

State personnel board: RCW 50.12.030.

74.04.013 Transfer of rights and functions to department of public assistance. The department of public assistance shall succeed to the rights and functions of the preexisting department of social security. [1959 c 26 § 74.04.013. Prior: 1953 c 174 § 48.]

74.04.015 Director responsible officer to administer federal funds, etc. The director of public assistance shall be the responsible state officer for the administration of, and the disbursement of all funds, goods, commodities and services, which may be received by the state in connection with, old age assistance, medical assistance to the aged, aid to families with dependent children, aid to the blind, disability assistance, child welfare services, vocational rehabilitation, and including, but not limited to other programs of public assistance or services related directly or indirectly to assistance programs, and all other matters included in the federal social security act approved August 14, 1935, or any other federal act or as the same may be amended excepting those required to be administered by the department of education or the state board of vocational education and those required to be administered and disbursed in connection with public health services such as communicable disease control, maternal and child health, sanitation, and vital statistics services.

He shall make such reports and render such accounting as may be required by the federal agency having authority in the premises. [1963 c 228 § 2; 1959 c 26 § 74.04.015. Prior: 1953 c 174 § 49; 1937 c 111 § 12; RRS § 10785-11.]

Children's center for research and training in mental retardation, director as advisory committee member: RCW 28B.20.412.

74.04.017 Aid to the blind program—Personnel. The personnel in the aid to the blind program shall be chosen on the basis of their experience and qualifications in the field of work among the blind, and to the fullest extent possible shall be residents of this state at the time of their selection. In appointing and employing personnel to carry into effect the provisions of chapter 74.16 RCW, the director shall give preference under the merit system to qualified and available blind persons up to fifty percent of such personnel. [1959 c 26 § 74.04.017. Prior: 1953 c 174 § 4. (i) 1949 c 166 § 13; 1937 c 132 § 2; Rem. Supp. 1949 § 10785-16. (ii) 1937 c 132 § 1; RRS § 10785-15. (iii) 1937 c 111 § 11; RRS § 10785-10.]

74.04.040 Relief declared joint federal, state, and county function. The care, support, and relief of needy persons is hereby declared to be a joint federal, state, and county function. County offices are charged with the responsibility, for the administration of public assistance within the respective county or counties or parts thereof as local offices of the department as prescribed by the rules and regulations of the department. [1959 c 26 § 74.04.040. Prior: 1953 c 174 § 12; 1939 c 216 § 5; RRS § 10007-105a.]

74.04.050 Department is responsible state agency. The department shall serve as the single state agency to administer public assistance. The department is hereby empowered and authorized to cooperate in the administration of such federal laws, consistent with the public assistance laws of this state, as may be necessary to qualify for federal funds for:

- (1) Old age assistance;
- (2) Medical assistance to the aged;
- (3) Aid to dependent children;
- (4) Aid to the needy blind;
- (5) Child welfare services;
- (6) Aid to permanently and totally disabled;
- (7) Any other programs of public assistance for which provision for federal grants or funds may from time to time be made.

The state hereby accepts and assents to all the present provisions of the federal law under which federal grants or funds, goods, commodities and services are extended to the state for the support of programs administered by the department, and to such additional legislation as may subsequently be enacted as is not inconsistent with the purposes of this title, authorizing public welfare and assistance activities. The provisions of this title shall be so administered as to conform with federal requirements with respect to eligibility for the receipt of federal grants or funds.

The department shall periodically make application for federal grants or funds and submit such plans, reports and data, as are required by any act of congress as a condition precedent to the receipt of federal funds for such assistance. The department shall make and enforce such rules and regulations as shall be necessary to insure compliance with the terms and conditions of such federal grants or funds. [1963 c 228 § 3; 1959 c 26

§ 74.04.050. Prior: 1955 c 273 § 21; 1953 c 174 § 6; 1939 c 216 § 6; RRS § 10007-106a.]

74.04.055 Cooperation with federal government—Construction. In furtherance of the policy of this state to cooperate with the federal government in the programs included in this title the director shall issue such rules and regulations as may become necessary to entitle this state to participate in federal grants-in-aid, goods, commodities and services unless the same be expressly prohibited by this title. Any section or provision of this title which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling this state to receive federal matching or other funds for the various programs of public assistance. [1963 c 228 § 4; 1959 c 26 § 74.04.055. Prior: 1953 c 174 § 50.]

74.04.057 Promulgation of rules and regulations to qualify for federal funds. The department is authorized to promulgate such rules and regulations as are necessary to qualify for any federal funds available under Title XVI of the federal social security act, and any other combination of existing programs of assistance consistent with federal law and regulations. [1969 ex.s. c 173 § 3.]

74.04.060 Records, etc., confidential—Exceptions—Penalty. For the protection of applicants and recipients, the department and the county offices and their respective officers and employees are prohibited, except as hereinafter provided, from disclosing the contents of any records, files, papers and communications, except for purposes directly connected with the administration of the programs of this title. In any judicial proceeding, except such proceeding as is directly concerned with the administration of these programs, such records, files, papers and communications, and their contents, shall be deemed privileged communications and except for the right of any individual to inquire of the office whether a named individual is a recipient of welfare assistance and such person shall be entitled to an affirmative or negative answer. However, upon written request of a parent who has been awarded visitation rights in an action for divorce or separation, the department shall disclose to him or her the current address and location of his or her natural or adopted children. Information supplied to a parent by the department shall be used only for purposes directly related to the visitation provisions of the court order of separation or decree of divorce. No parent shall disclose such information to any other person except for the purpose of enforcing visitation provisions of the said order or decree.

The county offices shall maintain monthly at their offices a report showing the names and addresses of all recipients in the county receiving public assistance under this title, together with the amount paid to each during the preceding month.

The provisions of this section shall not apply to duly designated representatives of approved private welfare agencies, public officials, members of legislative interim

committees and advisory committees when performing duties directly connected with the administration of this title, such as regulation and investigation directly connected therewith: *Provided, however,* That any information so obtained by such persons or groups shall be treated with such degree of confidentiality as is required by the federal social security law.

It shall be unlawful, except as provided in this section, for any person, body, association, firm, corporation or other agency to solicit, publish, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce in the use of any lists or names for commercial or political purposes of any nature. The violation of this section shall be a gross misdemeanor. [1973 c 152 § 1; 1959 c 26 § 74.04.060. Prior: 1953 c 174 § 7; 1950 ex.s. c 10 § 1; 1941 c 128 § 5; Rem. Supp. 1941 § 10007-106b.]

Severability—1973 c 152: "If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 c 152 § 3.] This applies to RCW 74.04.062 and to the amendment to RCW 74.04.060 by 1973 c 152 § 1.

Child support, department may disclose information to internal revenue department: RCW 74.20.160.

74.04.062 Disclosure of information to police officer or immigration official. Upon written request of a person who has been properly identified as an officer of the law with a felony arrest warrant or a properly identified United States immigration official with a warrant for an illegal alien the department shall disclose to such officer the current address and location of the person properly described in the warrant. [1973 c 152 § 2.]

Severability—1973 c 152: See note following RCW 74.04.060.

74.04.070 County office—Administrator. There may be established in each county of the state a county office which shall be administered by an executive officer designated as the county administrator. The county administrator shall be appointed by the director in accordance with the rules and regulations of the state merit system. [1959 c 26 § 74.04.070. Prior: 1953 c 174 § 13; 1941 c 128 § 2, part; 1939 c 216 § 4, part; Code 1881 §§ 2680, 2696; 1854 p 422 § 19; 1854 p 395 § 1; Rem. Supp. 1941 § 10007-104a, part.]

74.04.080 Personnel—Administrator's bond. The county administrator shall have the power to, and shall, employ such personnel as may be necessary to carry out the provisions of this title, which employment shall be in accordance with the rules and regulations of the state merit system, and in accordance with personnel and administrative standards established by the department. The county administrator before qualifying shall furnish a surety bond in such amount as may be fixed by the director, but not less than five thousand dollars, conditioned that the administrator will faithfully account for all money and property that may come into his possession or control. The cost of such bond shall be an administrative expense and shall be paid by the department. [1959 c 26 § 74.04.080. Prior: 1953 c 174 § 14; 1941 c 128 § 2, part; 1939 c 216 § 4, part; Code

1881 §§ 2680, 2696; 1854 p 422 § 19; 1854 p 395 § 1; Rem. Supp. 1941 § 10007-104a, part.]

74.04.120 Basis of state's allocation of federal aid funds. Allocations of state and federal funds shall be made upon the basis of need within the respective counties as disclosed by the quarterly budgets, considered in conjunction with revenues available for the satisfaction of that need: *Provided*, That in preparing his quarterly budget for federal aid assistance, the administrator shall include the aggregate of the individual case load approved by the department to date on the basis of need and the director and the public assistance committee shall approve and allocate an amount sufficient to service the aggregate case load as included in said budget, and in the event any portion of the budgeted case load cannot be serviced with moneys available for the particular category for which an application is made the committee may on the administrator's request authorize the transfer of sufficient general assistance funds to the appropriation for such category to service such case load and secure the benefit of federal matching funds. [1959 c 26 § 74.04.120. Prior: 1939 c 216 § 8, part; RRS § 10007-108a, part.]

74.04.180 Joint county administration. Public assistance may be administered through a single administrator and a single administrative office for one or more counties. There may be a local office for the transaction of official business maintained in each county. [1959 c 26 § 74.04.180. Prior: 1953 c 174 § 15; 1939 c 216 § 12; RRS § 10007-112a.]

74.04.200 State-wide standards to be enforced. It shall be the duty of the department of public assistance to establish uniform state-wide standards to govern the granting of assistance in the several categories of this title and it shall have power to compel compliance with such uniform standards as a condition to the receipt of state and federal funds by counties for social security purposes. [1959 c 26 § 74.04.200. Prior: 1939 c 216 § 14; RRS § 10007-114a.]

74.04.210 Basis of allocation of moneys. The moneys appropriated for public assistance purposes and subject to allocation as in this title provided shall be allocated to counties on the basis of past experience and established case load history. [1959 c 26 § 74.04.210. Prior: 1939 c 216 § 15; RRS § 10007-115a.]

74.04.250 General assistance—Immediate grants—Penalty. An applicant for any category of public assistance under this title may, in the discretion of the administrator, be granted general assistance at once upon making application therefor provided he submits to the administrator a sworn statement of need and resources; but if upon due investigation and inquiry on the part of the administrator it shall develop that such applicant swore falsely, he may be proceeded against criminally and if convicted be punished as for a gross misdemeanor. The county, through its prosecuting attorney, may also in such cases institute and prosecute

an action to recover any moneys wrongfully received by the applicant by means of his false statement. [1959 c 26 § 74.04.250. Prior: 1939 c 216 § 19; RRS § 10007-119a.]

General assistance defined: RCW 74.04.005.

Standards of assistance for general assistance: RCW 74.08.040.

74.04.265 Earnings—Deductions from grants. The director may issue rules consistent with federal laws and with memorials of the legislature, as will recognize the income of any persons without the deduction in full thereof from the amount of their grants. [1965 ex.s. c 35 § 1; 1959 c 26 § 74.04.265. Prior: 1953 c 174 § 16.]

74.04.270 Audit of accounts—Uniform accounting system. It shall be the duty of the state auditor to audit the accounts, books and records of the department of public assistance. The public assistance committee shall establish and install a uniform accounting system for all categories of public assistance, applicable to all officers, boards, commissions, departments or other agencies having to do with the allowance and disbursement of public funds for assistance purposes, which said uniform accounting system shall conform to the accounting methods required by the federal government in respect to the administration of federal funds for assistance purposes. [1959 c 26 § 74.04.270. Prior: 1939 c 216 § 21; RRS § 10007-121a.]

74.04.280 Assistance nontransferable and exempt from process. Assistance given under this title shall not be transferable or assignable at law or in equity and none of the moneys received by recipients under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. [1959 c 26 § 74.04.280. Prior: 1939 c 216 § 25; RRS § 10007-125a.]

74.04.290 Subpoena of witnesses, books, records, etc. In carrying out any of the provisions of this title, the director, county administrators, hearing examiners or other duly authorized officers of the department shall have power to subpoena witnesses, administer oaths, take testimony and compel the production of such papers, books, records and documents as they may deem relevant to the performance of their duties; but no officer or agency mentioned in this section shall have power to compel the production of any papers, books, records or documents which are in the custody of any other such officer or agency and within his or its power to provide voluntarily on request.

If an individual fails to obey the subpoena or obeys the subpoena but refuses to testify when required concerning any matter under examination or investigation or the subject of a hearing, the officer or agency issuing the subpoena may petition the superior court of the county where the examination or investigation is being conducted for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask an order of the court to compel the witness to

appear and testify before the agency. The court upon such petition shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he has not responded to the subpoena or has refused to testify. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant the court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey said order the witness shall be dealt with as for contempt of court. [1969 ex.s. c 173 § 2; 1959 c 26 § 74.04.290. Prior: 1939 c 216 § 26; RRS § 10007-126a.]

74.04.300 Recovery of payments improperly received—Lien. If a recipient receives public assistance for which he is not eligible, or receives public assistance in an amount greater than that for which he is eligible, the portion of the payment to which he is not entitled shall be a debt due the state: *Provided*, That if any part of any assistance payment is obtained by a person as a result of a wilfully false statement, or representation, or impersonation, or other fraudulent device, or wilful failure to reveal resources or income, one hundred twenty-five percent of the amount of assistance to which he was not entitled shall be a debt due the state and shall become a lien against the real and personal property of such person from the time of filing by the department with the county auditor of the county in which the person resides or owns property, and such lien claim shall have preference to the claims of all unsecured creditors. It shall be the duty of recipients of public assistance to notify the department within twenty days of the receipt or possession of all income or resources not previously declared to the department, and any failure to so report shall be prima facie evidence of fraud: *Provided further*, That there shall be no liability placed upon recipients for receipt of overpayments of public assistance which result from error on the part of the department and no fault on the part of the recipient in obtaining or retaining the assistance if the recovery thereof would be inequitable as determined by the director or his designee.

Debts due the state pursuant to the provisions of this section, may be recovered by the state by deduction from the subsequent assistance payments to such persons or may be recovered by a civil action instituted by the attorney general. [1973 1st ex.s. c 49 § 1; 1969 ex.s. c 173 § 18; 1959 c 26 § 74.04.300. Prior: 1957 c 63 § 3; 1953 c 174 § 35; 1939 c 216 § 27; RRS § 10007-127a.]

74.04.305 Overpayments and debts due the state—Suspense account—Charge off. Any overpayment or debt due the state from a recipient which the director of the department deems uncollectible may be transferred from accounts receivable to a suspense account and cease to be accounted an asset: *Provided further*, That the director may charge off as finally uncollectible any overpayment or debt which he deems uncollectible at

any time after six years after any person owing such overpayment or debt ceases to be a recipient of public assistance if the director and the attorney general are satisfied that there are no available and lawful means by which such overpayment or debt may thereafter be collected. [1965 ex.s. c 91 § 1.]

74.04.306 Overpayments and debts due the state—Proceedings for collection—Limitation. The director shall commence action for the collection of overpayments and debts due the state within six years after the notice of overpayment is given or within six years after the person ceases to be a recipient of public assistance, whichever is later. No proceedings for the collection of such overpayments or debts shall be begun after the expiration of such period. [1965 ex.s. c 91 § 2.]

74.04.310 Authority to accept contributions. In furthering the purposes of this title, the director or any county administrator may accept contributions or gifts in cash or otherwise from persons, associations or corporations, such contributions to be disbursed in the same manner as moneys appropriated for the purposes of this title: *Provided*, That the donor of such gifts may stipulate the manner in which such gifts shall be expended. [1959 c 26 § 74.04.310. Prior: 1939 c 216 § 28; RRS § 10007-128a.]

74.04.330 Annual reports by assistance organizations—Penalty. Every person, firm, corporation, association or organization receiving twenty-five percent or more of its income from contributions, gifts, dues, or other payments from persons receiving assistance, community work and training, federal-aid assistance, or any other form of public assistance from the state of Washington or any agency or subdivision thereof, and engaged in political or other activities in behalf of such persons receiving such public assistance, shall, within ninety days after the close of each calendar year, make a report to the director of the department of public assistance for the preceding year, which report shall contain:

(1) A statement of the total amount of contributions, gifts, dues, or other payments received;

(2) The names of any and all persons, firms, corporations, associations or organizations contributing the sum of twenty-five dollars or more during such year, and the amounts contributed by such persons, firms, corporations, associations, or organizations;

(3) A full and complete statement of all disbursements made during such year, including the names of all persons, firms, corporations, associations, or organizations to whom any moneys were paid, and the amounts and purposes of such payments; and

(4) Every such report so filed shall constitute a public record.

(5) Any person, firm, or corporation, and any officer or agent of any firm, corporation, association or organization, violating this section by failing to file such report, or in any other manner, shall be guilty of a gross misdemeanor. [1963 c 228 § 5; 1959 c 26 § 74.04.330. Prior: 1941 c 170 § 7; Rem. Supp. 1941 § 10007-138.]

74.04.340 Federal surplus commodities—Certification of persons eligible to receive commodities. The state department of public assistance is authorized to assist needy families and individuals to obtain federal surplus commodities for their use, by certifying, when such is the case, that they are eligible to receive such commodities. However, only those who are receiving or are eligible for public assistance or care and such others as may qualify in accordance with federal requirements and standards shall be certified as eligible to receive such commodities. [1959 c 26 § 74.04.340. Prior: 1957 c 187 § 2.]

Purchase of federal property: Chapter 39.32 RCW.

74.04.350 Federal surplus commodities—Not to be construed as public assistance, eligibility not affected. Federal surplus commodities shall not be deemed or construed to be public assistance and care or a substitute, in whole or in part, therefor; and the receipt of such commodities by eligible families and individuals shall not subject them, their legally responsible relatives, their property or their estates to any demand, claim or liability on account thereof. A person's need or eligibility for public assistance or care shall not be affected by his receipt of federal surplus commodities. [1959 c 26 § 74.04.350. Prior: 1957 c 187 § 3.]

74.04.360 Federal surplus commodities—Certification deemed administrative expense of department. Expenditures made by the state department of public assistance for the purpose of certifying eligibility of needy families and individuals for federal surplus commodities shall be deemed to be expenditures for the administration of public assistance and care. [1959 c 26 § 74.04.360. Prior: 1957 c 187 § 4.]

74.04.370 Federal surplus commodities—County program, expenses, handling of commodities. See RCW 36.39.040.

74.04.380 Federal and other surplus food commodities—Agreements—Personnel—Facilities—Cooperation with other agencies—Discontinuance of program. The director of the state department of public assistance, from funds appropriated to his department for such purpose, shall, upon receipt of authorization from the governor, provide for the receiving, warehousing and distributing of federal and other surplus food commodities for the use and assistance of recipients of public assistance or other needy families and individuals certified as eligible to obtain such commodities. The director is authorized to enter into such agreements as may be necessary with the federal government or any state agency in order to participate in any program of distribution of surplus food commodities including but not limited to a food stamp program. The director shall hire personnel, establish distribution centers and acquire such facilities as may be required to carry out the intent of this section; and he may carry out any such program as a sole operation of the department or in conjunction or cooperation with any similar program of distribution by private individuals or organizations, any

department of the state or any political subdivision of the state.

The director shall discontinue such program, or any part thereof, whenever in the determination of the governor such program, or any part thereof, is no longer in the best interest of the state. [1963 c 219 § 1; 1961 c 112 § 1.]

74.04.385 Unlawful practices relating to surplus commodities—Penalty. It shall be unlawful for any recipient of federal or other surplus commodities received under this act to sell, transfer, barter or otherwise dispose of such commodities to any other person. It shall be unlawful for any person to receive, possess or use any surplus commodities received under this act unless he has been certified as eligible to receive, possess and use such commodities by the state department of public assistance.

Violation of the provisions of this act shall constitute a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than six months or by a fine of not more than five hundred dollars or both. [1963 c 219 § 2.]

Reviser's note: Section 1 of chapter 219, Laws of 1963 amended RCW 74.04.380; section 2 thereof (herein RCW 74.04.385) was expressly added to chapter 26, Laws of 1959 and to chapter 74.04 RCW.

74.04.390 Community work and training program—Defined. The term community work and training program shall be defined as follows: A plan jointly entered into between the state department of public assistance and an agency, department, board or commission of the state or federal government, county, city or municipal corporation which is subject to approval of the state department of public assistance, under which the state or federal government, county, city or municipal corporation undertakes to provide work in and about public works or improvements, utilizing labor and services required to be performed by applicants or recipients of public assistance. [1963 c 228 § 6; 1961 c 269 § 2.]

Severability—1961 c 269: "The several provisions of this act are hereby declared to be separate and severable and if any clause, sentence, paragraph, subdivision, section or part thereof shall for any reason be adjudged invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other clause, sentence, paragraph, subdivision or section." [1961 c 269 § 8.] This applies to RCW 74.04.390 through 74.04.440.

74.04.400 Community work and training program—Rules and regulations. The state department of public assistance is empowered and directed to adopt such rules and regulations as will make a community work and training program fair, efficient and workable. [1963 c 228 § 7; 1961 c 269 § 3.]

74.04.410 Community work and training program—Agreements with governmental entities for employment of eligible persons—Amount of earnings. When the state or federal government or any agencies thereof, a county, city or municipal corporation has undertaken or is about to undertake, a program which is for the benefit of the general public or any segment

thereof, said state agency, county, city or municipal corporation may enter into an agreement with the state department of public assistance wherein and whereby the department of public assistance may assign unemployed employable persons who have attained the age of eighteen and who are eligible for assistance to do and perform work and labor on behalf of said state, or federal government, county, city or municipal corporation and such person shall perform, if available, work and labor for such state, or federal government, county, city or municipal corporation for the length of time necessary to earn at the legal minimum wage or the going hourly rate prevailing in the area for labor of like kind, whichever is higher, an amount of money equal to the amount of assistance granted to such person and the assistance unit of which he or his dependents is a part. [1963 c 228 § 8; 1961 c 269 § 4.]

74.04.420 Community work and training program—Denial or suspension of assistance—Grounds. Any person assigned to a community work and training program may be denied assistance or may be suspended for such time as may be fixed by the rules and regulations of the department of public assistance if such person without good cause:

- (1) Fails or refuses to satisfactorily perform the labor or services as may be assigned to him;
- (2) Fails or refuses to report to work under such a program when and as directed by the state, or federal government, county, city or municipal corporation or by his foreman, overseer or other supervisor therein;
- (3) Abandons or repeatedly absents himself from work;
- (4) Is insubordinate to his foreman, overseer or other supervisor therein;
- (5) Fails or refuses to take due precaution for the safety of himself or others or to use safety clothing or equipment made available to him; or
- (6) Is guilty of misconduct connected with such work. [1963 c 228 § 9; 1961 c 269 § 5.]

74.04.430 Community work and training program—Approval of program by department—Workmen's compensation. All community work and training programs, before an applicant or recipient of public assistance shall be assigned shall have met the approval of the state department of public assistance: *Provided*, That the state, or federal government, county, city or municipal corporation utilizing assistance applicants or recipients for work and labor shall insure that such employment is covered by workmen's compensation administered by the department of labor and industries, or a similar plan approved by the department of public assistance, and all fees and charges for such coverage shall be paid by such state, or federal government, county, city or municipal corporation except that portion which is paid for medical aid and is properly chargeable to such applicant or recipient of assistance. [1963 c 228 § 10; 1961 c 269 § 6.]

74.04.440 Community work and training program—Governmental entity to furnish transportation, tools, supervision. The state, or federal government, county, city or municipal corporation utilizing assistance applicants or recipients for work and labor shall furnish, where necessary, transportation, protective clothing and necessary tools and equipment for individuals performing such work or labor and shall take such measures as are necessary to insure that adequate supervision is provided on all such programs. [1963 c 228 § 11; 1961 c 269 § 7.]

74.04.450 Community work and training program—Work to serve useful public purpose and not displace regular workers. The work performed on a community work and training program by a recipient of public assistance must serve a useful public purpose, must not displace regular workers or result in the performance by such persons of work that would otherwise be performed by employees of public or private agencies, institutions or organizations except in case of projects which are emergent or nonrecurring. [1963 c 228 § 12.]

74.04.460 Community work and training program—Effect as to employment security program. Work and labor performed by an applicant or recipient of public assistance on a community work and training program shall not be deemed employment under the provisions of Title 50 RCW, and shall not deprive such person of any rights or benefits available thereunder. [1963 c 228 § 13.]

74.04.470 Community work and training program—Department may terminate agreements. The state department of public assistance shall have the right to terminate unilaterally any agreement entered into pursuant to RCW 74.04.410 with the state or federal government or any agency thereof, a county, city or municipal corporation whenever the community work and training program contemplated by such agreement fails, for any reason, to meet any provision of chapter 74.04 RCW relating to community work and training or the purposes thereof, or any rule or regulation promulgated by the department thereunder. [1963 c 228 § 14.]

74.04.480 Educational leaves of absence for public assistance personnel. The state department of public assistance is hereby authorized to promulgate rules and regulations governing the granting to any employee of the department, other than a provisional employee, a leave of absence for educational purposes to attend an institution of learning for the purpose of improving his skill, knowledge and technique in the administration of social welfare programs which will benefit the department.

Pursuant to the rules and regulations of the department, employees of the department who are engaged in the administration of public welfare programs may (1) attend courses of training provided by institutions of higher learning; (2) attend special courses of study or

seminars of short duration conducted by experts on a temporary basis for the purpose; (3) accept fellowships or traineeships at institutions of higher learning with such stipends as are permitted by regulations of the federal government.

The department of public assistance is hereby authorized to accept any funds from the federal government or any other public or private agency made available for training purposes for public assistance personnel and to conform with such requirements as are necessary in order to receive such funds. [1963 c 228 § 15.]

74.04.500 Food stamp program—Authorized. The department of public assistance is authorized to establish a food stamp program under the federal food stamp act of 1964. [1969 ex.s. c 172 § 4.]

74.04.505 Food stamp program—Eligibility. Eligibility for the food stamp program shall be determined on a household basis. A "household" means all related or nonrelated persons living together as one economic unit to share common household facilities and customarily purchase and prepare food in common. It shall also mean a single individual living alone who has cooking facilities and who purchases and prepares food for home consumption. Persons in nursing homes, infirmaries, hospitals, boarding homes or eating in restaurants and those without cooking facilities are excluded from this program. [1969 ex.s. c 172 § 5.]

74.04.510 Food stamp program—Rules and regulations. The department shall promulgate rules and regulations conforming to federal laws, rules and regulations required to be observed in maintaining the eligibility of the state to receive from the federal government and to issue or distribute to recipients, food stamps or coupons under a food stamp plan. Such rules and regulations shall relate to and include, but shall not be limited to: (1) The classifications of and requirements of eligibility of households to receive food stamps or coupons. (2) The periods during which households shall be certified or recertified to be eligible to receive food stamps or coupons under this plan. (3) The establishment of a purchase payment schedule for coupons graduated on the basis of the incomes and the number of persons in an eligible household. [1969 ex.s. c 172 § 6.]

74.04.515 Food stamp program—Discrimination prohibited. In determining eligibility for purchase of food stamps, there shall be no discrimination against any household by reason of race, color, or national origin. [1969 ex.s. c 172 § 7.]

74.04.520 Food stamp program—Confidentiality. The provisions of RCW 74.04.060 relating to disclosure of information regarding public assistance recipients shall apply to recipients of food stamps. [1969 ex.s. c 172 § 8.]

74.04.525 Food stamp program—Need or eligibility for public assistance not affected. A person's need or eligibility for public assistance or care shall not be affected by his receipt of food stamps. [1969 ex.s. c 172 § 9.]

74.04.527 Food stamp program—Penalty for reselling or purchasing resold food stamps or food purchased with food stamps. See RCW 9.91.120.

74.04.530 Recipient receiving industrial insurance compensation—Subrogation rights of department—Lien—Withhold and deliver notice. Notwithstanding any provisions in Title 51 RCW to the contrary, by accepting public assistance from the department of social and health services, the recipient thereof shall be deemed to have subrogated said department to the recipient's right to recover net time loss compensation due to such recipient pursuant to the provisions of Title 51 RCW of up to eighty percent of the extent of such assistance or compensation, whichever is less, furnished to the recipient for or during the period for which time loss compensation is payable: *Provided*, That where public assistance has been furnished to one or more persons to whom such a recipient owes a duty of support, whether such duty has been expressed by an order of court or otherwise, the department's right to recover any time loss compensation shall be limited to that part of such compensation allocated to such persons by RCW 51.32.090: *Provided, further*, That the amount to be repaid to the department of social and health services shall bear its proportionate share of attorney's fees and costs, if any, incurred by the injured workman or his dependents. The department of social and health services may assert and enforce a lien and notice to withhold and deliver as hereinafter provided to secure reimbursement of any public assistance paid for or during the period and for the purposes expressed in this section: *Provided, further*, That no claim for payment under chapter 73.34 RCW shall be subject to garnishment, attachment, levy, or execution. [1973 1st ex.s. c 102 § 1.]

74.04.540 Recipient receiving industrial insurance compensation—Form of lien and notice to withhold and deliver. The form of lien and notice to withhold and deliver in RCW 74.04.530 shall be signed by the secretary or his authorized representative and shall be substantially as follows:

STATEMENT OF LIEN AND NOTICE
TO WITHHOLD AND DELIVER

TO: State of Washington, Department of Labor and Industries

NOTICE IS HEREBY GIVEN THAT DURING THE PERIOD commencing _____ and ending _____, the department of social and health services furnished public assistance to _____ in the amount of \$_____, and therefore it claims a lien in the amount of \$_____, upon time loss compensation payable to said recipient for or during

said period in the amount above stated. You are therefore commanded to withhold and deliver to the department of social and health services, to the extent of the amount claimed due, any funds you now hold or which may come into your possession on account of time loss compensation payable to said recipient for or during the period mentioned.

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL
AND HEALTH SERVICES
BY -----
(Title)

[1973 1st ex.s. c 102 § 2.]

74.04.550 Recipient receiving industrial insurance compensation—Effective date of lien and notice—Service. The effective date of the statement of lien and notice to withhold and deliver provided in RCW 74.04.540, shall be the day that it is received by the director of the department of labor and industries or an employee of his office of suitable discretion: *Provided*, That service of such statement of lien and notice to withhold and deliver may be made personally or by regular mail, postage prepaid: *Provided, further*, That a copy of the statement of lien and notice to withhold and deliver shall be mailed to the recipient at his last known address by certified mail, return receipt requested, no later than three days after such statement of lien and notice to withhold and deliver has been mailed or delivered to the department of labor and industries. [1973 1st ex.s. c 102 § 3.]

74.04.560 Recipient receiving industrial insurance compensation—Duty to withhold and deliver—Amount. The director of the department of labor and industries, following receipt of the statement of lien and notice to withhold and deliver, shall deliver to the secretary of the department of social and health services or his designee any funds up to the amount claimed he may hold, or which may at any time come into his possession, on account of time loss compensation payable to said recipient for or during the period stated, immediately upon a final determination of the recipient's entitlement to the time loss compensation in accordance with the provisions of Title 51 RCW. [1973 1st ex.s. c 102 § 4.]

74.04.570 Recipient receiving industrial insurance compensation—Hearing. Any person feeling himself aggrieved by the action of the department of social and health services in impounding his time loss compensation as provided in RCW 74.04.530 through 74.04.580 shall have the right to an administrative hearing, which hearing may be conducted by an examiner designated by the secretary for such purpose.

Any such person who desires a hearing shall, within thirty days after the notice to withhold and deliver has been mailed to or served upon the director of the department of labor and industries and said appellant, file with the secretary a notice of appeal from said action.

The hearings conducted shall be in accordance with chapter 34.04 RCW (Administrative Procedure Act). [1973 1st ex.s. c 102 § 5.]

74.04.580 Recipient receiving industrial insurance compensation—Application. RCW 74.04.530 through 74.04.580 shall not apply to persons whose eligibility for benefits under Title 51 RCW, is based upon an injury or illness occurring prior to July 1, 1972. [1973 1st ex.s. c 102 § 6.]

74.04.600 Supplemental security income program—Purpose. The purpose of RCW 74.04.600 through 74.04.650 is to recognize and accept that certain act of congress known as Public Law 92-603 and Public Law 93-66, and to enable the department of social and health services to take advantage of and implement the provisions of that act. The state shall provide assistance to those individuals who were eligible or would have been eligible for benefits under this state's old age assistance, disability assistance, and aid to the blind programs as they were in effect in December, 1973 but who will no longer be eligible for such program due to Title XVI of the Social Security Act. [1973 2nd ex.s. c 10 § 1.]

74.04.610 Supplemental security income program—Termination of federal financial assistance payments—Supersession by supplemental security income program. Effective January 1, 1974, the financial assistance payments under the federal aid categories of old age assistance, disability assistance, and blind assistance provided in chapters 74.08, 74.10, and 74.16 RCW, respectively, and the corresponding provisions of RCW 74.04.005, shall be terminated and superseded by the national program to provide supplemental security income to individuals who have attained age sixty-five or are blind or disabled as established by Public Law 92-603 and Public Law 93-66: *Provided*, That the agreements between the department of social and health services and the United States department of health, education and welfare receive such legislative authorization and/or ratification as required by RCW 74.04.630. [1973 2nd ex.s. c 10 § 2.]

74.04.620 State supplementation to national program of supplemental security income—Authorized. The department is authorized to establish a program of state supplementation to the national program of supplemental security income consistent with Public Law 92-603 and Public Law 93-66 to those persons who are in need thereof in accordance with eligibility requirements established by the department.

The department is authorized to establish reasonable standards of assistance and resource and income exemptions specifically for such program of state supplementation which shall be consistent with the provisions of the Social Security Act. [1973 2nd ex.s. c 10 § 3.]

74.04.630 State supplementation to national program of supplemental security income—Contractual agreements with federal government—Authorization and

ratification required. The department shall enter into contractual agreements with the United States department of health, education and welfare, consistent with the provisions of Public Laws 92-603 and 93-66, and to be effective January 1, 1974, for the purpose of enabling the secretary of the department of health, education and welfare to perform administrative functions of state supplementation to the national supplemental security income program and the determination of medicaid eligibility on behalf of the state. The department is authorized to transfer and make payments of state funds to the secretary of the department of health, education and welfare as required by Public Laws 92-603 and 93-66: *Provided, however,* That such agreements shall be submitted for review and comment to the social and health services committees of the senate and house of representatives, and shall be subject to authorization and/or ratification by the legislative budget committee, and such agreements shall not bind the state unless and until such authorization and/or ratification is given: *Provided further, however,* That if the authorization and ratification is not given, the department of social and health services shall administer the state supplemental program as established in RCW 74.04.620. [1973 2nd ex.s. c 10 § 4.]

74.04.640 Acceptance of referrals for vocational rehabilitation—Reimbursement. Referrals to the state department of social and health services for vocational rehabilitation made in accordance with section 1615 of Title XVI of the Social Security Act, as amended, shall be accepted by the state.

The department shall be reimbursed by the secretary of the department of health, education and welfare for the costs it incurs in providing such vocational rehabilitation services. [1973 2nd ex.s. c 10 § 5.]

74.04.650 Individuals failing to comply with federal drug abuse and alcoholism treatment requirements—Reapplication for state assistance required. Notwithstanding any other provisions of RCW 74.04.600 through 74.04.650 for those individuals who have been receiving supplemental security income assistance and failed to comply with federal requirements relating to drug abuse and alcoholism treatment and rehabilitation shall be required to reapply for state assistance programs to be eligible for state assistance. [1973 2nd ex.s. c 10 § 6.]

Chapter 74.08

ELIGIBILITY GENERALLY—STANDARDS OF ASSISTANCE—OLD AGE ASSISTANCE

Sections

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74.08.560	Homemaker—home health, chore, and personal and household services—Employment of public assistance recipients.

74.08.025 Eligibility for public assistance generally. Public assistance shall be awarded to any applicant:

- (1) Who is in need; and
- (2) Who has not made a voluntary assignment of property or cash for the purpose of qualifying for an assistance grant; and
- (3) Who is not an inmate of a public institution except as a patient in a medical institution or except as an inmate in a public institution who could qualify for federal aid assistance: *Provided,* That the assistance paid by the department to recipients in nursing homes, or receiving nursing home care, may cover the cost of clothing and incidentals and general maintenance exclusive of medical care and health services. The department may pay a grant to cover the cost of clothing and personal incidentals in public or private medical institutions and institutions for tuberculosis. [1971 ex.s. c 169 § 1; 1967 ex.s. c 31 § 1; 1959 c 26 § 74.08.025. Prior: 1953 c 174 § 19.]

Aid to dependent children: RCW 74.12.030.

Aid to the blind: RCW 74.16.030.

Disability assistance: RCW 74.10.020.

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

Old age assistance: RCW 74.08.030.

74.08.030 Old age assistance eligibility requirements. In addition to meeting the eligibility requirements of RCW 74.08.025, an applicant for old age assistance must be an applicant who:

(1) Has attained the age of sixty-five: *Provided*, That if an applicant for old age assistance is already on the assistance rolls in some other program or category of assistance, such applicant shall be considered eligible the first of the month immediately preceding the date on which such applicant will attain the age of sixty-five; and

(2) Is a resident of the state of Washington. [1971 ex.s. c 169 § 2; 1961 c 248 § 1; 1959 c 26 § 74.08.030. Prior: 1953 c 174 § 20; 1951 c 165 § 1; 1951 c 1 § 5; 1949 c 6 § 4; Rem. Supp. 1949 § 9998-33d.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

74.08.040 Amount of grant—Standards of assistance. Grants shall be awarded on a uniform state-wide basis in accordance with standards of assistance established by the department. The department shall establish standards of assistance for old age assistance, aid to dependent children, aid to the blind, and general assistance to unemployable persons which shall be used to determine an applicant's or recipient's living requirements and which shall include reasonable allowances for shelter, fuel, food, clothing, household maintenance and operation, personal maintenance, and necessary incidentals. The total dollar value of the assistance budget shall, under average conditions, be not less than seventy-five dollars per month for an individual living alone; but a recipient shall not receive a grant of seventy-five dollars or more unless his actual requirements amount to seventy-five dollars. Grants shall be paid in the amount of requirements less all available income and resources which can be applied by the recipient toward meeting need, including shelter.

In order to determine such standards of assistance the department shall establish objective budgetary guides based upon actual living cost studies of the items of the budget. Such living cost studies shall be renewed or revised annually and new standards of assistance reflecting current living costs shall determine budgets of need. Any indicated adjustment in standards shall become effective not later than June 1st of 1953 and June 1st of each succeeding year.

The standards of assistance shall take into account the economy of joint living arrangements, and the department may, by rule and regulation, prescribe maximums for grants.

For general assistance to unemployed employable persons, the department shall establish standards of assistance based upon annual living cost studies and compatible with a minimum necessary for decent and healthful subsistence. Such standards shall permit the meeting of actual and emergent need on an individual basis. [1959 c 26 § 74.08.040. Prior: 1957 c 63 § 2; 1953 c 174 § 18; 1951 c 1 § 6; 1949 c 6 § 5; Rem. Supp. 1949 § 9998-33e.]

74.08.043 Need for personal and special care—Authority to consider in determining living requirements. In determining the living requirements of otherwise eligible applicants and recipients of old age assistance, aid to the blind, disability assistance and general assistance, the department is authorized to consider the need for personal and special care and supervision due to physical and mental conditions. [1969 ex.s. c 172 § 10.]

74.08.044 Need for personal and special care—Rules and regulations. The department is authorized to promulgate rules and regulations establishing eligibility for alternate living arrangements, including minimum standards of care, based upon need for personal care and supervision beyond the level of board and room only, but less than the level of care required in a hospital or a skilled nursing home as defined in the federal social security act. [1969 ex.s. c 172 § 11.]

74.08.045 Need for personal and special care—Purchase of personal and special care by department. The department may purchase such personal and special care at reasonable rates established by the department from substitute homes and intermediate care facilities providing this service is in compliance with standards of care established by the regulations of the department. [1969 ex.s. c 172 § 12.]

74.08.047 General assistance for persons attending high school or vocational or technical institution. The department shall provide general assistance to any person who meets the eligibility requirements of RCW 74.08.025 and who at the time of attaining the age of eighteen years is attending a state approved high school or vocational or technical training institution and is a recipient or beneficiary of "public assistance" as defined in RCW 74.04.005(1): *Provided*, That such general assistance shall continue so long as the person continually attends school on a full time basis in accordance with the requirements of the appropriate school authorities, through the end of the school year immediately following the person's eighteenth birthday: *Provided further*, That the department of social and health services is authorized to extend this limitation for one additional year if in the opinion of the department such extension will result in the completion of a secondary education. [1973 1st ex.s. c 35 § 1.]

74.08.048 Grants to be on uniform state-wide basis. Grants shall be awarded on a uniform state-wide basis in accordance with standards of assistance established by the department for general assistance to unemployable persons. [1973 1st ex.s. c 35 § 2.]

74.08.050 Applications for grants. Application for a grant in any category of public assistance shall be made to the county office by the applicant or by another on his behalf, and shall be reduced to writing upon standard forms prescribed by the department, and a written acknowledgment of receipt of the application by the department shall be given to each applicant at the time of making application. [1971 ex.s. c 169 § 3; 1959 c 26 §

74.08.050. Prior: 1953 c 174 § 26; 1949 c 6 § 6; Rem. Supp. 1949 § 9998–33f.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

74.08.055 Verification of applications—Penalty. Each applicant for or recipient of public assistance shall make an application for assistance which shall contain or be verified by a written declaration that it is made under the penalties of perjury. The director, by rule and regulation, may require that any other forms filled out by applicants or recipients of public assistance shall contain or be verified by a written declaration that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each applicant shall be so informed at the time of the signing.

Any applicant for or recipient of public assistance who wilfully makes and subscribes any application, statement or other paper which contains or is verified by a written declaration that it is made under the penalties of perjury and which he does not believe to be true and correct as to every material matter shall be guilty of a felony. [1959 c 26 § 74.08.055. Prior: 1953 c 174 § 27.]

Perjury: Chapter 9.72 RCW.

74.08.060 Approval or denial of application—Applications prior to eligibility. The department shall be required to approve or deny the application within forty-five days after the filing thereof and shall immediately notify the applicant in writing of its decision: *Provided*, That if the department is not able within forty-five days, despite due diligence, to secure all information necessary to establish his eligibility, the department is charged to continue to secure such information and if such information, when established, makes applicant eligible, the department shall pay his grant from date of authorization or forty-five days after date of application whichever is sooner.

Any person entitled to relief but under temporary disability from making application, or any person about to become sixty-five years of age or the parent of an unborn child who upon birth will become a dependent child may at any time after forty-five days prior to the occurrence of any of said events make application as herein provided. [1969 ex.s. c 173 § 6; 1959 c 26 § 74.08.060. Prior: 1953 c 174 § 28; 1949 c 6 § 7; Rem. Supp. 1949 § 9998–33g.]

74.08.070 Fair hearing on grievances—Procedure. Any applicant or recipient feeling himself aggrieved by the decision of the department or any authorized agency of the department shall have the right to a fair hearing to be conducted by the director of the department or by a duly appointed, qualified and acting supervisor thereof, or by an examiner especially appointed by the director for such purpose. The hearing shall be conducted in the county in which the appellant resides, and a transcript of the testimony shall be made and included in the record, the costs of which shall be borne by the department. A copy of this transcript shall be given

the appellant if request for same is made in writing by the appellant or his attorney of record.

Any appellant who desires a fair hearing shall within thirty days after receiving notice of the decision of the department or an authorized agency of the department, file with the director a notice of appeal from the decision. The department shall notify the appellant of the time and place of said hearing at least twenty days prior to the date thereof by registered mail or by personal service upon said appellant, unless otherwise agreed by appellant and the department.

At any time after the filing of the notice of appeal with the director, any appellant or attorney for appellant with written authorization or next of kin shall have the right of access to, and can examine any files and records of the department in the case of appeal.

It shall be the duty of the department within sixty days after receipt of the notice of appeal to notify the appellant of the decision of the director.

If the decision of the director is made in favor of the appellant, assistance shall be paid from the date of the denial of the application or forty-five days following the date of application, whichever is sooner; or in the case of a recipient, from the effective date of the initial departmental county office decision. [1969 ex.s. c 172 § 1; 1959 c 26 § 74.08.070. Prior: 1953 c 174 § 30; 1949 c 6 § 8; Rem. Supp. 1949 § 9998–33h.]

74.08.080 Judicial review. In the event an appellant feels himself aggrieved by the decision rendered in the hearing provided for in RCW 74.08.070, he shall have the right to petition the superior court for judicial review in accordance with the provisions of chapter 34.04 RCW, as now or hereafter amended. Either party may appeal from the decision of the superior court to the supreme court or the court of appeals of the state: *Provided*, That no filing fee shall be collected of the appellant and no bond shall be required on any appeal under this chapter. In the event that the superior court, the court of appeals, or the supreme court renders a decision in favor of the appellant, said appellant shall be entitled to reasonable attorney's fees and costs. If a decision of the court is made in favor of the appellant, assistance shall be paid from date of the denial of the application or forty-five days following the date of application, whichever is sooner; or in the case of a recipient, from the effective date of the initial departmental county office decision. [1971 c 81 § 136; 1969 ex.s. c 172 § 2; 1959 c 26 § 74.08.080. Prior: 1953 c 174 § 31; 1949 c 6 § 9; Rem. Supp. 1949 § 9998–33i.]

74.08.090 Rules and regulations. The department is hereby authorized to make rules and regulations not inconsistent with the provisions of this title to the end that this title shall be administered uniformly throughout the state, and that the spirit and purpose of this title may be complied with. The department shall have the power to compel compliance with the rules and regulations established by it. Such rules and regulations shall be filed in accordance with the Administrative Procedure Act, as it is now or hereafter amended, and copies shall be available for public inspection in the office of

the department and in each county office. [1969 ex.s. c 173 § 5; 1959 c 26 § 74.08.090. Prior: 1953 c 174 § 5; 1949 c 6 § 10; Rem. Supp. 1949 § 9998-33j.]

74.08.100 Age and length of residence verification. Proof of age and length of residence in the state of any applicant may be established as provided by the rules and regulations of the department: *Provided*, That if an applicant is unable to establish proof of age or length of residence in the state by any other method he may make a statement under oath of his age on the date of application or the length of his residence in the state, before any judge of the superior court, any judge of the court of appeals, or any justice of the supreme court of the state of Washington, and such statement shall constitute sufficient proof of age of applicant or of length of residence in the state: *Provided however*, That any applicant who wilfully makes a false statement as to his age or length of residence in the state under oath before a judge of the superior court, a judge of the court of appeals, or a justice of the supreme court, as provided above, shall be guilty of a felony. [1971 c 81 § 137; 1959 c 26 § 74.08.100. Prior: 1949 c 6 § 11; Rem. Supp. 1949 § 9998-33k.]

74.08.105 Out-of-state recipients. No assistance payments shall be made to recipients living outside the state of Washington unless in the discretion of the director there is sound social reason for such out-of-state payments: *Provided*, That the period for making such payments when authorized shall not exceed the length of time required to satisfy the residence requirements in the other state in order to be eligible for a grant in the same category of assistance as the recipient was eligible to receive in Washington. [1959 c 26 § 74.08.105. Prior: 1953 c 174 § 39.]

74.08.112 Old age assistance grants not recoverable as debt due state—Exceptions. Old age assistance grants awarded to an applicant under the laws of the state of Washington shall not be recoverable as a debt due the state, except where such funds have been received by the applicant contrary to law, or by fraud or deceit. Any and all claims accrued under the provisions of section 36, chapter 174, Laws of 1953 and RCW 74.08.111 are hereby renounced and declared to be null and void, except those claims which have accrued or which shall accrue on the basis of grants which have been received contrary to law, or by fraud or deceit. [1959 c 26 § 74.08.112. Prior: 1957 c 63 § 4.]

74.08.120 Funeral expenses. The term "funeral" shall mean the proper preparation and care of the remains of a deceased person with needed facilities and appropriate memorial services, including necessary costs of a lot or cremation and all services related to interment and the customary memorial marking of a grave.

The department is hereby authorized through the county offices to assume responsibility for the funeral of deceased persons dying without assets sufficient to pay for the minimum standard funeral herein provided:

Provided, however, That the director may furnish funeral assistance for deceased recipients if they leave assets to a surviving spouse and/or to minor children and if the assets are resources permitted to be owned by or available to an eligible applicant or recipient under RCW 74.04.005, and the department shall thereby have a lien against said assets valid for six years from the date of filing with the county auditor and such lien claim shall have preference to all other claims except prior secured creditors. If the assets remain exempt, or if no probate is commenced, the lien shall automatically terminate without further action six years after filing. If the deceased person is survived by a spouse or is a minor child survived by his parent or parents, the department may take into consideration the assets of such surviving spouse, parent, or parents in determining whether or not the department will assume responsibility for the funeral.

The department shall not pay more than cost for a minimum standard service rendered by each vendor. Payments to the funeral director and to the cemetery or crematorium will be made by separate vouchers. The standard of such services and the uniform amounts to be paid shall be determined by the department after giving due consideration to such advice and counsel as it shall obtain from the trade associations of the various vendors and related state departments, agencies and commissions. The payments made by the department shall not be subject to supplementation by the relatives or friends of recipients. Whenever relatives or friends provide for other than the minimum standard service authorized, the state shall not participate in the payment of any part of the cost. [1969 ex.s. c 259 § 1; 1969 ex.s. c 159 § 1; 1965 ex.s. c 102 § 1; 1959 c 26 § 74.08.120. Prior: 1953 c 174 § 32; 1949 c 6 § 13; Rem. Supp. 1949 § 9998-33m.]

Indigent person, county to dispose of remains: RCW 36.39.030.

74.08.210 Grants not assignable nor subject to execution. Grants awarded under this title shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of bankruptcy or insolvency law. [1959 c 26 § 74.08.210. Prior: 1941 c 1 § 16; 1935 c 182 § 17; 1933 c 29 § 13; Rem. Supp. 1941 § 9998-49.]

74.08.260 Federal act to control in event of conflict. If any plan of administration of this title submitted to the federal security agency shall be found to be not in conformity with the federal social security act by reason of any conflict of any section, portion, clause or part of this title and the federal social security act, such conflicting section, portion, clause or part of this title is hereby declared to be inoperative to the extent that it is so in conflict, and such finding or determination shall not affect the remainder of this title. [1959 c 26 § 74.08.260. Prior: 1949 c 6 § 17; Rem. Supp. 1949 § 9998-33q.]

74.08.278 Central operating fund established. In order to comply with federal statutes and regulations pertaining to federal matching funds and to provide for the prompt payment of initial grants and adjusting payments of grants the director is authorized to make provisions for the cash payment of assistance by the director or county administrators by the establishment of a central operating fund. The director may establish such a fund with the approval of the state auditor from moneys appropriated to the department for the payment of general assistance in a sum not to exceed one million dollars. Such funds shall be deposited as agreed upon by the director and the state auditor in accordance with the laws regulating the deposits of public funds. Such security shall be required of the depository in connection with the fund as the state treasurer may prescribe. Moneys remaining in the fund shall be returned to the general fund at the end of the biennium, or an accounting of proper expenditures from the fund shall be made to the state auditor. All expenditures from such central operating fund shall be reimbursed out of and charged to the proper program appropriated by the use of such forms and vouchers as are approved by the director of the department and the state auditor. Expenditures from such fund shall be audited by the director of the budget and the state auditor from time to time and a report shall be made by the state auditor and the director as are required by law. [1959 c 26 § 74.08.278. Prior: 1953 c 174 § 42; 1951 c 261 § 1.]

74.08.280 Payments to persons incapable of self-care. If any person receiving public assistance is, on the testimony of reputable witnesses, found incapable of taking care of himself or his money, the director may direct the payment of the installments of public assistance to any responsible person or corporation or to a legally appointed guardian for his benefit: *Provided*, That if the state requires the appointment of a guardian for this purpose the department shall pay all costs and reasonable fees as fixed by the court. [1959 c 26 § 74.08.280. Prior: 1953 c 174 § 40; 1937 c 156 § 7; 1935 c 182 § 10; RRS § 9998-10.]

74.08.283 Services provided to attain self-care. The department is authorized to provide such social and related services as are reasonably necessary to the end that applicants for or recipients of public assistance are helped to attain self-care. [1963 c 228 § 16; 1959 c 26 § 74.08.283. Prior: 1957 c 63 § 6.]

74.08.290 Suspension of payments. The department is hereby authorized to suspend temporarily the public assistance granted to any person for any period during which such person is not in need thereof.

If a recipient is convicted of any crime or offense, and punished by imprisonment, no payment shall be made during the period of imprisonment. [1959 c 26 § 74.08.290. Prior: 1953 c 174 § 38; 1935 c 182 § 12; RRS § 9998-12.]

74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty—Penalties. Any person who by means of a wilfully false statement, or representation, or impersonation, or a wilful failure to reveal any material fact, condition or circumstance affecting eligibility of need for assistance, including medical care, surplus commodities and food stamps, as required by law, or a wilful failure to promptly notify the county office in writing as required by law or any change in status in respect to resources, or income, or need, or family composition, money contribution and other support, from whatever source derived, or any other change in circumstances affecting his eligibility or need for assistance, or other fraudulent device, obtains, or attempts to obtain, or aids or abets any person to obtain any public assistance to which he is not entitled or greater public assistance than that to which he is justly entitled shall be guilty of grand larceny and upon conviction thereof shall be punished by imprisonment in the state penitentiary for not more than fifteen years.

Any person who by means of a wilfully false statement or representation or by impersonation or other fraudulent device aids or abets in buying, selling, or in any other way disposing of the real property of a recipient of public assistance without the consent of the director shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by imprisonment for not more than one year in the county jail or a fine of not to exceed one thousand dollars or by both. [1965 ex.s. c 34 § 1.]

74.08.335 Transfers of property to qualify for assistance. Public assistance shall not be granted under this title to any person who has made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this title. Any person who shall have transferred or shall transfer any real or personal property or any interest in property within two years of the date of application for public assistance without receiving adequate monetary consideration therefor, or any person who after becoming a recipient transfers any property or any interest in property without the consent of the director, shall be ineligible for public assistance for a period of time during which the reasonable value of the property so transferred would have been adequate to meet his needs under normal conditions of living: *Provided*, That the director is hereby authorized to allow exceptions in cases where undue hardship would result from a denial of assistance. [1959 c 26 § 74.08.335. Prior: 1953 c 174 § 33.]

74.08.338 Real property transfers for inadequate consideration—Recovery of assistance payments. When the consideration for a deed executed and delivered by a recipient is not paid, or when the consideration does not approximate the fair cash market value of the property, such deed shall be prima facie fraudulent as to the state. The attorney general upon request of the director shall file suit to rescind such transaction except as to subsequent bona fide purchasers for value. In the event that it be established by judicial proceedings that a fraudulent conveyance occurred, the value of any

public assistance which may have been furnished may be recovered in any proceedings from the recipient or his estate. [1959 c 26 § 74.08.338. Prior: 1953 c 174 § 37.]

74.08.340 No vested rights conferred. All assistance granted under this title shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be enacted, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by such amending or repealing act. [1959 c 26 § 74.08.340. Prior: 1935 c 182 § 21; RRS § 9998-21.]

74.08.370 Old age assistance grants charged against general fund. All old age assistance grants under this title shall be a charge against and payable out of the general fund of the state. Payment thereof shall be by warrant drawn upon vouchers duly prepared and verified by the secretary of the department of social and health services or his official representative. [1973 c 106 § 33; 1959 c 26 § 74.08.370. Prior: 1935 c 182 § 24; RRS § 9998-24. FORMER PART OF SECTION: 1935 c 182 § 25; RRS § 9998-25, now codified as RCW 74.08.375.]

74.08.375 Deposit of federal aid for old age assistance moneys. Any moneys which may be received by the state of Washington from the federal government as aid in defraying the cost of old age assistance under this title shall be deposited in the state treasury to the credit of the general fund but separate accounts shall be kept in order that the state may make such reports and render such accounting as may be required by the appropriate federal authority. [1959 c 26 § 74.08.375. Prior: 1935 c 182 § 25; RRS § 9998-25. Formerly RCW 74.08.370, part.]

74.08.380 Acceptance of federal act. The state hereby accepts the provisions of that certain act of the congress of the United States entitled, An Act to provide for the general welfare by establishing a system of federal old age benefits, and by enabling the several states to make more adequate provisions for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a social security board; to raise revenue; and for other purposes, and such other act with like or similar objects as may be enacted. [1959 c 26 § 74.08.380. Prior: 1937 c 156 § 12; 1935 c 182 § 26; RRS § 9998-26.]

74.08.390 Research, projects, to effect savings by restoring self-support—Waiver of public assistance requirements. The department of public assistance may conduct research studies, pilot projects, demonstration projects, surveys and investigations for the purpose of determining methods to achieve savings in public assistance programs by means of restoring individuals to maximum self-support and personal independence and preventing social and physical disablement, and for the accomplishment of any of such purposes may employ

consultants or enter into contracts with any agency of the federal, state or local governments, nonprofit corporations, universities or foundations.

Pursuant to this authority the department may waive the enforcement of specific statutory requirements, regulations, and standards in one or more counties or on a state-wide basis by formal order of the director. The order establishing the waiver shall provide alternative methods and procedures of administration, shall not be in conflict with the basic purposes, coverage, or benefits provided by law, shall not be general in scope but shall apply only for the duration of such a project and shall not take effect unless the secretary of health, education and welfare of the United States has agreed, for the same project, to waive the public assistance plan requirements relative to state-wide uniformity. [1969 ex.s. c 173 § 7; 1963 c 228 § 17.]

74.08.530 Homemaker-home health, chore, and personal and household services—Legislative finding. The legislature finds that it is desirable to provide certain services for certain citizens in order that such persons may remain in their own homes and maintain a closer contact with the community. Such a program will seek to prevent mental and psychological deterioration which our citizens might otherwise experience. [1973 1st ex.s. c 51 § 1.]

74.08.540 Homemaker-home health, chore, and personal and household services—Definitions—Purpose—Eligible persons. (1) The term "services" shall include homemaker-home health services, chore services and personal and household services.

(2) The goal of the homemaker-home health service within the department of social and health services shall be to maintain, strengthen, improve and safeguard home and family life by augmenting professional services in homes where there are social and/or health needs which interfere with the independent functioning of an individual or family.

The principal purpose of the homemaker-home health service shall be:

(a) To keep the family together while the natural homemaker is incapacitated, either in or out of the home; and to prevent family breakdown for any other reason, thus avoiding the shock of separating children from their parents, their brothers and sisters, their schools, their friends.

(b) To enable the elderly, the chronically ill, the mentally ill, retarded, or otherwise disabled individual to remain in or return to his own home among familiar surroundings whenever possible in accordance with RCW 74.08.283.

(c) To permit an individual to remain at home, or, to return home sooner than he otherwise could from an institution. This will allow for more appropriate utilization of hospitals, nursing homes, and other facilities. It will help offset the cost of expensive institutional care for the family, the individual and the community.

(d) To keep the employed adult on the job who otherwise must take unscheduled time off to care for children, an elderly parent, or an ill relative.

(e) To help individuals and families learn better management of daily living, including improved child-rearing practices and self-care.

(3) Housekeeping service shall mean service primarily concerned with the performance of household tasks and the physical care of small children where required. Housekeeping services do not include the assumption of parental duties normally associated with the direction and management of children.

Housekeeping service is an additional requirement when the normal caretaker of the children:

(a) Is in the home (except for a temporary period) and retains responsibility for direction and management of the children;

(b) Is in the home but is physically unable to perform the necessary household services and/or physical care of children without assistance; and

(c) Is not available and there is no person available to render the service without cost.

(4) Chore services includes the provision of household and personal care as needed to give attention and protection for the client's safety and well-being.

Chore services means services in performing light work, household tasks or personal care which eligible persons are unable to do for themselves because of frailty or other conditions. Chore services include, but are not limited to assisting in keeping client and home neat and clean, preparation of meals, help in shopping, lawn care, simple household repairs, running errands, wood chopping, and other tasks as required.

Eligible persons shall be recipients of old age assistance, aid to the blind, disability assistance, and general assistance to the unemployable who are potential disability assistance recipients, nonrecipients sixty-five years old or over released from a mental institution who are eligible for medical assistance under the state's Title XIX plan, and those potential recipients who would otherwise be eligible for public assistance if the cost of this service were an additional grant requirement. [1973 1st ex.s. c 51 § 2.]

74.08.550 Homemaker-home health, chore, and personal and household services—Department to develop program. The department of social and health services is authorized to develop a program to provide for those services enumerated in RCW 74.08.540. [1973 1st ex.s. c 51 § 3.]

74.08.560 Homemaker-home health, chore, and personal and household services—Employment of public assistance recipients. In developing the program set forth in RCW 74.08.550, the department shall, to the extent possible, and consistent with federal law, enlist the services of persons receiving grants under the provisions of chapter 74.08 RCW and chapter 74.12 RCW to carry out the services enumerated under RCW 74.08.540 herein. To this end, the department shall establish appropriate rules and regulations designed to determine eligibility for employment under this section, as well as regulations designed to notify persons receiving such grants of eligibility for such employment. The department shall further establish a system of compensation

to persons employed under the provisions of this section which provides that any grants they receive under chapter 74.08 RCW or chapter 74.12 RCW shall be diminished by such percentage of the compensation received under this section as the department shall establish by rules and regulations. [1973 1st ex.s. c 51 § 4.]

Chapter 74.09 MEDICAL CARE

Sections	
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74.09.510	Medical assistance—Qualifications of applicants.
74.09.520	Medical assistance—Care and services included.
74.09.530	Medical assistance—Powers and duties of department.
74.09.900	Other laws applicable.

74.09.010 Definitions. As used in this chapter:

(1) "Department" means the department of public assistance.

(2) "Director" means the director of the department of public assistance.

(3) "Division" or "division of medical care" means the division of medical care of the department of public assistance.

(4) "Assistant director" means the supervisor of the division of medical care of the department of public assistance.

(5) "Internal management" means the administration of medical and related services to recipients of public assistance and medical indigent persons.

(6) "Medical indigents" are persons without income or resources sufficient to secure necessary medical services.

(7) "Chapter" means chapter 74.09 RCW.

(8) "Nursing home" means nursing home as defined in RCW 18.51.010. [1959 c 26 § 74.09.010. Prior: 1955 c 273 § 2.]

Department of social and health services: Chapter 43.20A RCW.

74.09.020 Declaration of purpose. The purpose of this chapter is to provide for more efficient administration of medical, dental and allied services to recipients of public assistance and medical indigent persons. [1959 c 26 § 74.09.020. Prior: 1955 c 273 § 3.]

74.09.030 Responsibility of division of medical care. Administrative responsibility for providing for needed medical, dental and allied services to recipients of public assistance and medical indigents shall be the responsibility of the division of medical care. [1959 c 26 § 74.09.030. Prior: 1955 c 273 § 4.]

74.09.040 Division of medical care established—Qualifications of assistant director. There is hereby established in the department of public assistance a division of medical care. The division of medical care shall be administered by an assistant director appointed by the director of the department in accordance with the state merit system or its successor. The assistant director may be a physician and shall be selected on the basis of his knowledge and understanding of administration and shall have demonstrated his ability therein. [1959 c 26 § 74.09.040. Prior: 1955 c 273 § 5.]

74.09.041 Division of medical care established—Assistant director's office abolished and powers, duties and functions transferred. See RCW 43.20A.200.

74.09.050 Assistant director's responsibilities and duties—Personnel—Medical screeners. The assistant director shall be directly responsible to the director and shall have charge and supervision of the division of medical care. With the approval of the director, he shall appoint such professional personnel and other assistants and employees, including professional medical screeners, as may be reasonably necessary to carry out the provisions of this chapter. The medical screeners shall be supervised by one or more physicians who shall be appointed by the assistant director. [1959 c 26 § 74.09.050. Prior: 1955 c 273 § 6.]

74.09.060 Rules and regulations—Internal organization of division. The assistant director in the exercise of his administrative responsibilities shall:

(1) Prepare and submit to the director rules, regulations and procedures for the exercise and performance of the administrative powers and duties vested in or imposed upon him, not inconsistent with the law.

(2) Determine, and from time to time alter when necessary, the internal organization of the division to promote maximum efficiency and economy. [1959 c 26 § 74.09.060. Prior: 1955 c 273 § 7.]

74.09.070 Eligibility of public assistance recipients and medical indigents. The determination of eligibility of recipients for public assistance shall be the responsibility of the department.

Recipients of public assistance shall be entitled to such medical services as are defined by the assistant director, who shall consider the recommendations thereon of the welfare medical care committee.

The determination of eligibility of medical indigents shall be the responsibility of the division of medical care with consideration to the standards recommended by the welfare medical care committee. The division of medical care is empowered to employ the necessary personnel to carry out the standards established. [1959 c 26 § 74.09.070. Prior: 1955 c 273 § 8.]

74.09.075 Evaluation of employability when medical condition represented—Medical reports—Medical consultations and assistance. The division of medical care shall provide (a) for evaluation of employability when a person is applying for public assistance representing a medical condition as a basis for need, and (b) for medical reports to be used in the evaluation of total and permanent disability. It shall further provide for medical consultation and assistance in determining the need for special diets, housekeeper and attendant services, and other requirements as found necessary because of the medical condition under the rules promulgated by the director after considering the recommendation thereon by the medical care advisory committee. [1967 ex.s. c 30 § 2.]

74.09.080 Methods of performing administrative responsibilities. In carrying out the administrative responsibility of this chapter, the division of medical care may contract with an individual or a group, may utilize existing local state public assistance offices, or establish separate welfare medical care offices on a county or multicounty unit basis as found necessary. [1959 c 26 § 74.09.080. Prior: 1955 c 273 § 9.]

74.09.110 Administrative and professional personnel—Professional consultants and screeners. The division of medical care shall employ administrative personnel in both state and local offices and employ the services of professional screeners and consultants as found necessary to carry out the proper administration of the program. [1959 c 26 § 74.09.110. Prior: 1955 c 273 § 12.]

74.09.120 Purchases of services, care, supplies. The department shall purchase necessary physician and dentist services by contract or "fee for service." The department shall purchase hospital care by contract or by all inclusive day rate, or at a reasonable cost based on a ratio of charges to cost. Any hospital when requested by the department shall supply such information as necessary to justify its rate, charges or costs. All additional services provided by the hospital shall be purchased at rates established by the department after consultation with the hospital. The department shall purchase nursing home care by contract or at not more

than the minimum ward rate of each nursing home or infirmary. Any nursing home or infirmary when requested by the department shall supply such information as necessary to justify this rate. All additional services provided by the nursing home or infirmary shall be purchased at rates established by the department after consultation with the nursing home or infirmary.

All other services and supplies provided under the program shall be secured by contract. [1967 ex.s. c 30 § 1; 1959 c 26 § 74.09.120. Prior: 1955 c 273 § 13.]

Purchasing by state departments: RCW 43.19.200.

74.09.130 Minimum standards, rules, policies—Filing. The state welfare medical care committee may make recommendations for the minimum standards of care to be provided by the various vendor groups and other standards and rules and regulations as may be necessary to carry out the provisions of this chapter. Such rules, regulations and standards prescribed shall be submitted to the assistant director for his consideration. If approved by the director they shall be filed with the secretary of state and shall become effective thirty days thereafter.

The committee shall further advise the division of medical care on policies and rules and regulations governing the administration of the program. [1959 c 26 § 74.09.130. Prior: 1955 c 273 § 14.]

74.09.140 Statistical and financial analysis. The department shall biennially provide the committee, the governor and the legislature with a full statistical and financial analysis of the program which shall set forth the amount of service provided, utilization and expenditures by groups served, and kind of services provided and other pertinent information. [1959 c 26 § 74.09.140. Prior: 1955 c 273 § 15.]

74.09.150 Personnel to be under existing merit system. All personnel employed in the administration of the medical care program shall be covered by the existing merit system under the state personnel board or its successor. [1959 c 26 § 74.09.150. Prior: 1955 c 273 § 16.]

State personnel board: Chapter 41.06 RCW.

74.09.160 Presentment of charges by contractors—Revolving funds. Each vendor or group who has a contract and is rendering service to eligible persons as defined in this chapter shall submit such charges as agreed upon between the department and the individual or group on a monthly basis and shall present their final charges not more than sixty days after the termination of service. If the final charges are not presented within the sixty day period they shall not be a charge against the state unless previous extension in writing has been given by the department. Said sixty day period may also be extended by regulation, but only if required by applicable federal law or regulation, and to no more than the extension of time so required.

The department is authorized to set up a medical prepayments revolving fund, or funds, to be used solely

for the payment of medical care. Deposits into this fund or these funds shall be made from the appropriation for medical care. Such deposits shall be based upon a per capita amount per beneficiary, said amounts to be determined by the department from time to time. The department may set up such fund or funds to cover any one, several, or all items of the medical care costs of one, several, or all public assistance programs as deemed most advantageous by the secretary for the best interests of the state: *Provided*, That in the event such fund, or funds is, or are dissolved, the federal government shall be reimbursed for its proportionate share of contributions into such fund or funds. [1973 1st ex.s. c 48 § 1; 1959 c 26 § 74.09.160. Prior: 1955 c 273 § 17.]

74.09.170 Availability of records and reports of department. All of the records and reports of the department of public assistance relative to the administration of the program covered by this chapter shall be available to the state welfare medical care committee, subject to all restrictions of confidentiality of RCW 74.04.060. [1959 c 26 § 74.09.170. Prior: 1955 c 273 § 18.]

74.09.180 Chapter does not apply where third party liable—Exception, subrogation—Lien. The provisions of this chapter shall not apply to recipients whose personal injuries are occasioned by negligence or wrong of another: *Provided, however*, That the secretary of the department of social and health services may, in his discretion, furnish assistance, under the provisions of this chapter, for the results of injuries to a recipient, and the department of social and health services shall thereby be subrogated to the recipient's right of recovery therefor to the extent of the value of the assistance furnished by the department of social and health services: *Provided further*, That to the end of securing reimbursement of any assistance furnished to such a recipient, the department of social and health services may, as a nonexclusive legal remedy, assert and enforce a lien upon any claim, right of action and/or money to which such recipient is entitled (a) against any tortfeasor and/or insurer of such tortfeasor, or (b) any contract of insurance providing coverage to such recipient for said injuries, to the extent of the assistance furnished by said department to the recipient. If a recovery shall be made and the subrogation or lien is satisfied either in full or in part as a result of an independent action initiated by or on behalf of a recipient to recover the personal injuries against any tortfeasor or insurer, then and in that event the amount repaid to the state of Washington as a result of said action, whether concluded by entry of a judgment or compromise and settlement, shall bear its proportionate share of attorney's fees and costs incurred by the injured recipient or his widow, children, or dependents, as the case may be, to the extent that such attorney's fees and costs are approved by the court in which the action is initiated, and upon notice to the department which shall have the right to be heard on the matter. [1971 ex.s. c 306 § 1; 1969 ex.s. c 173 § 8; 1959 c 26 § 74.09.180. Prior: 1955 c 273 § 19.]

74.09.182 Chapter does not apply where third party liable—Statement of lien—Form. The form of the lien in RCW 74.09.180 shall be substantially as follows:

STATEMENT OF LIEN

Notice is hereby given that the State of Washington, Department of Public Assistance, has rendered assistance to _____, a person who was injured on or about the ____ day of _____ in the county of _____ state of _____, and the said department hereby asserts a lien, to the extent provided in RCW 74.09.180, for the amount of such assistance, upon any sum due and owing _____ (name of injured person) from _____, alleged to have caused the injury, and/or his insurer and from any other person or insurer liable for the injury or obligated to compensate the injured person on account of such injuries by contract or otherwise.

STATE OF WASHINGTON, DEPARTMENT OF PUBLIC ASSISTANCE

By: _____ (Title)

STATE OF WASHINGTON }
COUNTY OF _____ } ss.

I, _____, being first duly sworn, on oath state: That I am _____ (title); that I have read the foregoing Statement of Lien, know the contents thereof, and believe the same to be true.

Subscribed and sworn to before me this ____ day of _____, 19__.

Notary Public in and for the State of Washington, residing at _____

[1969 ex.s. c 173 § 9.]

74.09.184 Chapter does not apply where third party liable—Lien effective upon being filed. The lien created in RCW 74.09.180 shall become effective upon being filed with the county auditor of the county in which the assistance was authorized by the department. [1969 ex.s. c 173 § 10.]

74.09.186 Chapter does not apply where third party liable—Settlement between recipient and tort feisor and/or insurer—Lien not discharged—Exceptions. No settlement made by and between the recipient and tort feisor and/or insurer shall discharge the lien created in RCW 74.09.180, against any money due or owing by such tort feisor or insurer to the recipient or relieve the tort feisor and/or insurer from liability by reason of such lien unless such settlement also provides for the payment and discharge of such lien or unless a written release or waiver of such claim or lien, signed by the department, be filed in the court where any action has been commenced on such claim, or in case no action has been commenced against the tort feisor and/or insurer, then such written release or waiver shall

be delivered to the tort feisor or insurer. [1969 ex.s. c 173 § 12.]

74.09.190 Construction of chapter—Religious beliefs. Nothing in this chapter shall be construed as empowering the director to compel any recipient of public assistance and a medical indigent person to undergo any physical examination, surgical operation, or accept any form of medical treatment contrary to the wishes of said person who relies on or is treated by prayer or spiritual means in accordance with the creed and tenets of any well recognized church or religious denomination. [1959 c 26 § 74.09.190. Prior: 1955 c 273 § 23.]

74.09.500 Medical assistance—Established. There is hereby established a new program of federal-aid assistance to be known as medical assistance to be administered by the state department of public assistance. The department of public assistance is authorized to comply with the federal requirements for the medical assistance program provided in the Social Security Act and particularly Title XIX of Public Law (89-97) in order to secure federal matching funds for such program. [1967 ex.s. c 30 § 3.]

74.09.510 Medical assistance—Qualifications of applicants. Medical assistance may be provided in accordance with eligibility requirements established by the department of social and health services to an applicant: (1) Who is in need; (2) who has not made a voluntary assignment of property or cash for the purpose of qualifying for an assistance grant; (3) who is not an inmate of a public institution except as a patient in a medical institution or except as an inmate in a county or city jail or juvenile detention facility, or except as an inmate in a public institution who could qualify for federal aid assistance; and (4) who is a resident of the state of Washington. [1971 ex.s. c 169 § 4; 1970 ex.s. c 60 § 1; 1967 ex.s. c 30 § 4.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

74.09.520 Medical assistance—Care and services included. The term "medical assistance" may include the following care and services: (1) Inpatient hospital services; (2) outpatient hospital services; (3) other laboratory and x-ray services; (4) skilled nursing home services; (5) physicians' services, which shall include prescribed medication and instruction on birth control devices; (6) medical care, or any other type of remedial care as may be established by the director; (7) home health care services; (8) private duty nursing services; (9) dental services; (10) physical therapy and related services; (11) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (12) other diagnostic, screening, preventive, and rehabilitative services. [1969 ex.s. c 173 § 11; 1967 ex.s. c 30 § 5.]

74.09.530 Medical assistance—Powers and duties of department. The amount and nature of medical assistance and the determination of eligibility of recipients for medical assistance shall be the responsibility of the department of public assistance. The department shall establish reasonable standards of assistance and resource and income exemptions which shall be consistent with the provisions of the Social Security Act and with the regulations of the secretary of health, education and welfare for determining eligibility of individuals for medical assistance and the extent of such assistance to the extent that funds are available from the state and federal government. [1967 ex.s. c 30 § 6.]

74.09.900 Other laws applicable. All the provisions of Title 74 RCW, not otherwise inconsistent herewith, shall apply to the provisions of this chapter. [1959 c 26 § 74.09.900. Prior: 1955 c 273 § 22.]

Chapter 74.10 DISABILITY ASSISTANCE

Sections

- 74.10.010 Disability assistance—Administration—Intent.
74.10.020 Eligibility.
74.10.030 Amount of assistance—Dependents.
74.10.070 Restoration to health and independence—Services provided.
74.10.090 Department authorized to disregard part of income of recipients as resource.
74.10.100 Intent and purpose of chapter.

Determination of disability—Old age and survivors' insurance: RCW 43.17.120, 43.17.130.

74.10.010 Disability assistance—Administration—Intent. There is hereby created a new category of federal aid assistance to be known as disability assistance to be administered on a uniform state-wide basis by the state department of public assistance. The legislature hereby expresses its intention to comply with the federal requirements under the provisions of public law 734 (64 Statutes at Large 548) creating a new category of assistance in order to secure federal matching funds for such a program. [1959 c 26 § 74.10.010. Prior: 1951 c 176 § 1.]

74.10.020 Eligibility. In addition to the eligibility requirements under RCW 74.08.025, as now or hereafter amended, disability assistance grants will be awarded on a uniform state-wide basis to an applicant who is:

(1) Permanently and totally disabled as defined by the state department of social and health services and such definition is approved by the federal security agency for federal matching funds, and

(2) Eighteen years of age or over, and

(3) Is a resident of the state of Washington, and

(4) Willing to submit himself to such examinations as are deemed necessary by the state department of social and health services to establish the extent and nature of his disability. [1971 ex.s. c 169 § 5; 1959 c 26 § 74.10.020. Prior: 1953 c 174 § 25; 1951 c 176 § 2.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

74.10.030 Amount of assistance—Dependents. In determining the amount of assistance to which an eligible applicant or recipient shall be entitled, the department of public assistance is authorized to include the needs of such applicant's or recipient's legal dependents if they are not concurrently receiving another type of public assistance. [1959 c 26 § 74.10.030. Prior: 1951 c 176 § 3.]

74.10.070 Restoration to health and independence—Services provided. The department is authorized to provide through employment of properly qualified personnel such social and related services as are found necessary for proper administration of this chapter and to the end that applicants for or recipients of disability assistance are helped to attain self-care and/or self-support by effective use of all resources for rehabilitation and restoration to health and independence. The department of public assistance shall refer recipients who can be benefited thereby to the appropriate public and private resources for rehabilitation through retraining, restorative services, treatment and therapy. [1959 c 26 § 74.10.070. Prior: 1957 c 63 § 7; 1951 c 176 § 7.]

74.10.090 Department authorized to disregard part of income of recipients as resource. The department of public assistance is authorized to disregard as income of every eligible recipient of disability assistance under the provisions of this chapter an amount not exceeding fifty dollars of the first eighty dollars earned in any single month by such recipient as follows:

(1) The first twenty dollars earned by any eligible recipient is wholly exempt, and shall not be considered as a resource within the definition and application of this title;

(2) Fifty percent of any amount earned by such eligible recipient in excess of twenty dollars but not exceeding eighty dollars, is exempt to such eligible recipient and shall not be considered as a resource within the definition and application of this title;

(3) Every earned amount in excess of eighty dollars shall be considered a resource within the meaning of this title. [1967 ex.s. c 60 § 1.]

74.10.100 Intent and purpose of chapter. It is the intent and purpose of this chapter that eligible recipients of disability assistance be given rehabilitation incentives by which they may make a better life for themselves and for their families, and in order that they may contribute productive energies benefiting the state and nation. [1967 ex.s. c 60 § 2.]

Chapter 74.12 AID TO FAMILIES WITH DEPENDENT CHILDREN

Sections

- 74.12.010 Definitions.
74.12.030 Eligibility.
74.12.240 Services provided to help attain maximum self-support and independence of parents and relatives.
74.12.250 Payment of grant to another—Limited guardianship.

- 74.12.260 Persons to whom grants shall be made—Proof of use for benefit of children.
- 74.12.270 Protective payments subject to fair hearing and appeal procedure.
- 74.12.280 Rules and regulations for coordination of services.
- 74.12.290 Evaluation of suitability of home.
- 74.12.300 Grant during period required to eliminate undesirable conditions.
- 74.12.310 Placement of child with other relatives.
- 74.12.320 Placement of child pursuant to chapter 13.04 RCW.
- 74.12.330 Assistance not to be denied for want of relative or court order.
- 74.12.340 Day care.
- 74.12.350 Department may promulgate rules to allow child's income to be set aside for future needs.

Agencies—Children, expectant mothers, care, placement: Chapter 74.15 RCW.

Children and youth services: Chapter 72.05 RCW.

Council for children and youth, state: Chapter 72.05 RCW.

Division for handicapped children: Chapter 28A.13 RCW.

Enforcement of support of dependent children: Chapters 74.20 and 74.20A RCW.

Female and child labor: Chapter 49.12 RCW.

Juvenile court: Title 13 RCW.

Sale or gift of tobacco or intoxicating liquor to minor is gross misdemeanor: RCW 26.28.080.

State schools for blind and deaf: Chapter 72.40 RCW.

74.12.010 Definitions. For the purposes of the administration of aid to families with dependent children assistance, the term "dependent child" means any child in need under the age of eighteen years who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of the parent, and who is with his father, mother, grandmother, grandfather, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their homes. The term a "dependent child" shall, notwithstanding the foregoing, also include a child who would meet such requirements except for his removal after April 30, 1961, from the home of a relative specified above as a result of a judicial determination that continuation therein would be contrary to the welfare of such child, for whose placement and care the state department of social and health services or the county office is responsible, and who has been placed in a licensed or approved child care institution or foster home as a result of such determination and who: (1) Was receiving an aid to families with dependent children grant for the month in which court proceedings leading to such determination were initiated; or (2) would have received aid to families with dependent children for such month if application had been made therefor; or (3) in the case of a child who had been living with a specified relative within six months prior to the month in which such proceedings were initiated, would have received aid to families with dependent children for such month if in such month he had been living with such a relative and application had been made therefor, as authorized by the Social Security Act: *Provided*, That the director shall have discretion to provide that aid to families with dependent children assistance shall be available to any child in need who has been deprived

of parental support or care by reason of the unemployment of a parent or stepparent liable under this chapter for the support of such child, to the extent that matching funds are available from the federal government.

"Aid to families with dependent children" means money payments, services, and remedial care with respect to a dependent child or dependent children and the needy parent or relative with whom the child lives and may include the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity or unemployment of a parent or stepparent liable under this chapter for the support of such child. [1973 2nd ex.s. c 31 § 1; 1969 ex.s. c 173 § 13; 1965 ex.s. c 37 § 1; 1963 c 228 § 18; 1961 c 265 § 1; 1959 c 26 § 74.12.010. Prior: 1957 c 63 § 10; 1953 c 174 § 24; 1941 c 242 § 1; 1937 c 114 § 1; Rem. Supp. 1941 § 9992-101.]

74.12.030 Eligibility. In addition to meeting the eligibility requirements of RCW 74.08.025, as now or hereafter amended, an applicant for aid to families with dependent children must be a needy child who is a resident of the state of Washington. [1971 ex.s. c 169 § 6; 1963 c 228 § 19; 1959 c 26 § 74.12.030. Prior: 1953 c 174 § 23; 1941 c 242 § 2; 1937 c 114 § 4; Rem. Supp. 1941 § 9992-104.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

74.12.240 Services provided to help attain maximum self-support and independence of parents and relatives. The department is authorized to provide such social and related services as are reasonably necessary to encourage the care of dependent children in their own homes or in the homes of relatives, to help maintain and strengthen family life and to help such parents or relatives to attain maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection. In the provision of such services, maximum utilization of other agencies providing similar or related services shall be effected. [1959 c 26 § 74.12.240. Prior: 1957 c 63 § 8.]

74.12.250 Payment of grant to another—Limited guardianship. If the department, after investigation, finds that any recipient of funds under an aid to families with dependent children grant is not utilizing the grant adequately for the needs of the child or children or is otherwise dissipating such grant, or is unable to manage adequately the funds paid on behalf of said child and that to continue said payments to him would be contrary to the welfare of the child, the department may make such payments to another individual who is interested in or concerned with the welfare of such child and relative: *Provided*, That the department shall provide such counseling and other services as are available and necessary to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family. Periodic review of each case shall be made by the department to determine if

said relative is able to resume management of the assistance grant. If after a reasonable period of time the payments to the relative cannot be resumed, the department may request the attorney general to file a petition in the superior court for the appointment of a guardian for the child or children. Such petition shall set forth the facts warranting such appointment. Notice of the hearing on such petition shall be served upon the recipient and the department not less than ten days before the date set for such hearing. Such petition may be filed with the clerk of superior court and all process issued and served without payment of costs. If upon the hearing of such petition the court is satisfied that it is for the best interest of the child or children, and all parties concerned, that a guardian be appointed, he shall order the appointment, and may require the guardian to render to the court a detailed itemized account of expenditures of such assistance payments at such time as the court may deem advisable.

It is the intention of this section that the guardianship herein provided for shall be a special and limited guardianship solely for the purpose of safeguarding the assistance grants made to dependent children. Such guardianship shall terminate upon the termination of such assistance grant, or sooner on order of the court, upon good cause shown. [1963 c 228 § 21; 1961 c 206 § 1.]

74.12.260 Persons to whom grants shall be made—
Proof of use for benefit of children. Aid to families with dependent children grants shall be made to persons specified in RCW 74.12.010 as amended or such others as the federal department of health, education and welfare shall recognize for the sole purposes of giving benefits to the children whose needs are included in the grant paid to such persons. The recipient of each aid to families with dependent children's grant shall be and hereby is required to present reasonable proof to the department of public assistance as often as may be required by the department that all funds received in the form of an aid to families with dependent children grant for the children represented in the grant are being spent for the benefit of the children. [1963 c 228 § 22.]

74.12.270 Protective payments subject to fair hearing and appeal procedure. The decision of the department that there is need for a protective payment because of the relative's inability to manage the assistance payment shall be subject to the provisions of RCW 74.08.070 and RCW 74.08.080. [1963 c 228 § 23.]

74.12.280 Rules and regulations for coordination of services. The department is hereby authorized to promulgate rules and regulations which will provide for coordination between the services provided pursuant to RCW 74.12.130 and the services provided under the aid to families with dependent children program in order to provide welfare and related services which will best promote the welfare of such children and their families and conform with the provisions of Public Law 87-543 (HR 10606). [1963 c 228 § 24.]

Reviser's note: RCW 74.12.130 referred to above was repealed by 1965 c 30 § 5. For later enactment concerning child welfare services, see chapter 74.13 RCW.

74.12.290 Evaluation of suitability of home. The department of public assistance shall, during the initial and any subsequent determination of eligibility, evaluate the suitability of the home in which the dependent child lives, consideration to be given to physical care and supervision provided in the home; social, educational, and the moral atmosphere of the home as compared with the standards of the community; the child's physical and mental health and emotional security, special needs occasioned by the child's physical handicaps or illnesses, if any; the extent to which desirable factors outweigh the undesirable in the home; and the apparent possibility for improving undesirable conditions in the home. [1963 c 228 § 25.]

74.12.300 Grant during period required to eliminate undesirable conditions. If the home in which the child lives is found to be unsuitable, but there is reason to believe that elimination of the undesirable conditions can be effected, and the child is otherwise eligible for aid, a grant shall be initiated or continued for such time as the state department of public assistance and the family require to remedy the conditions. [1963 c 228 § 26.]

74.12.310 Placement of child with other relatives. When intensive efforts over a reasonable period have failed to improve the home conditions, the department shall determine if any other relatives specified by the social security act are maintaining a suitable home and are willing to take the care and custody of the child in their home. Upon an affirmative finding the department shall, if the parents or relatives with whom the child is living consent, take the necessary steps for placement of the child with such other relatives, but if the parents or relatives with whom the child lives refuse their consent to the placement then the department shall file a petition in the juvenile court for a decree adjudging the home unsuitable and placing the dependent child with such other relatives. [1963 c 228 § 27.]

74.12.320 Placement of child pursuant to chapter 13.04 RCW. If a diligent search reveals no other relatives as specified in the social security act maintaining a suitable home and willing to take custody of the child, then the department may file a petition in the appropriate juvenile court for placement of the child pursuant to the provisions of chapter 13.04 RCW. [1963 c 228 § 28.]

74.12.330 Assistance not to be denied for want of relative or court order. Notwithstanding the provisions of this chapter a child otherwise eligible for aid shall not be denied such assistance where a relative as specified in the social security act is unavailable or refuses to accept custody and the juvenile court fails to enter an order removing the child from the custody of the parent, relative or guardian then having custody. [1963 c 228 § 29.]

74.12.340 Day care. The department is authorized to promulgate rules and regulations governing the provision of day care as a part of child welfare services when the secretary determines that a need exists for such day care and that it is in the best interests of the child, the parents, or the custodial parent and in determining the need for such day care priority shall be given to geographical areas having the greatest need for such care and to members of low income groups in the population: *Provided*, That where the family is financially able to pay part or all of the costs of such care, fees shall be imposed and paid according to the financial ability of the family. [1973 1st ex.s. c 154 § 111; 1963 c 228 § 30.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Child welfare services: Chapter 74.13 RCW.

74.12.350 Department may promulgate rules to allow child's income to be set aside for future needs. The department of public assistance is hereby authorized to promulgate rules and regulations in conformity with the provisions of Public Law 87-543 to allow all or any portion of a dependent child's earned or other income to be set aside for the identifiable future needs of the dependent child which will make possible the realization of the child's maximum potential as an independent and useful citizen. [1963 c 226 § 1.]

**Chapter 74.13
CHILD WELFARE SERVICES**

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74.13.010 Declaration of purpose. The purpose of this chapter is to safeguard, protect and contribute to the welfare of the children of the state, through a comprehensive and coordinated program of public child welfare services providing for: Social services and facilities for children who require guidance, care, control, protection, treatment or rehabilitation; setting of standards for social services and facilities for children; cooperation with public and voluntary agencies, organizations, and citizen groups in the development and coordination of programs and activities in behalf of children; and promotion of community conditions and resources that help parents to discharge their responsibilities for the care, development and well-being of their children. [1965 c 30 § 2.]

Chapter added: "There is added to chapter 26, Laws of 1959 and to Title 74 RCW a new chapter to read as set forth in sections 2 through 4 of this act." [1965 c 30 § 1.]

74.13.020 Definitions—"Child", "child welfare services". As used in Title 74 RCW, child welfare services shall be defined as public social services including adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

- (1) Preventing or remedying, or assisting in the solution of problems which may result in the neglect, abuse, exploitation, or delinquency of children;
- (2) Protecting and caring for homeless, dependent, or neglected children;
- (3) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;
- (4) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

As used in this chapter, child means a person less than eighteen years of age. [1971 ex.s. c 292 § 66; 1965 c 30 § 3.]

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

74.13.031 Duties of department—Establishment of child welfare and day care advisory committee—Duty of juvenile court. The department shall have the duty to provide child welfare services as defined in RCW 74.13.020, and shall:

- (1) Develop, administer, and supervise a plan that establishes, extends aid to, and strengthens services for the protection and care of homeless, dependent or neglected children, or children in danger of becoming delinquent.
- (2) Investigate complaints of neglect, abuse, or abandonment of children by parents, guardians, custodians, or persons serving in loco parentis, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents,

guardians, custodians or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. If the investigation reveals that a crime may have been committed, notify the appropriate law enforcement agency.

(3) Cooperate with other public and voluntary agencies and organizations in the development and coordination of programs and activities in behalf of children.

(4) Have authority to accept custody of children from parents, guardians, and/or juvenile courts, to provide child welfare services including placement for adoption, and to provide for the physical care of such children and to make payment of maintenance costs if needed. A child in need of detention, whether alleged to be dependent or delinquent, shall, prior to findings and disposition by the court pursuant to RCW 13.04.095, be the responsibility of and provided for by the juvenile court.

(5) Have authority to purchase care for children and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(6) Establish a child welfare and day care advisory committee who shall act as an advisory committee to the state advisory committee and to the secretary in the development of policy on all matters pertaining to child welfare, day care, licensing of child care agencies, and services related thereto. [1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

Severability—1967 c 172: See note following RCW 74.15.010.

Child abuse, report, investigation: Chapter 26.44 RCW.

Child welfare and day care advisory committee: RCW 74.32.051.

Licensing of agencies caring for or placing children, expectant mothers and adult retarded: Chapter 74.15 RCW.

74.13.040 Rules and regulations for coordination of services. See RCW 74.12.280.

74.13.050 Day care—Rules and regulations governing the provision of day care as a part of child welfare services. See RCW 74.12.340.

74.13.060 Secretary as custodian of funds of person placed with department—**Authority**—**Limitations**—**Termination.** The secretary or his designees or delegates shall be the custodian without compensation of such moneys and other funds of any person which may come into the possession of the secretary during the period such person is placed with the department of social and health services pursuant to chapter 74.13 RCW. As such custodian, the secretary shall have authority to disburse moneys from the person's funds for the following purposes only and subject to the following limitations:

(1) The secretary may disburse any of the funds belonging to such person for such personal needs of such person as the secretary may deem proper and necessary.

(2) The secretary may apply such funds against the amount of public assistance otherwise payable to such

person. This includes applying, as reimbursement, any benefits, payments, funds, or accrual paid to or on behalf of said person from any source against the amount of public assistance expended on behalf of said person during the period for which the benefits, payments, funds or accruals were paid.

(3) All funds held by the secretary as custodian may be deposited in a single fund, the receipts and expenditures therefrom to be accurately accounted for by him on an individual basis. Whenever, the funds belonging to any one person exceed the sum of five hundred dollars, the secretary may deposit said funds in a savings and loan association account on behalf of that particular person.

(4) When the conditions of placement no longer exist and public assistance is no longer being provided for such person, upon a showing of legal competency and proper authority, the secretary shall deliver to such person, or the parent, person, or agency legally responsible for such person, all funds belonging to the person remaining in his possession as custodian, together with a full and final accounting of all receipts and expenditures made therefrom.

(5) The appointment of a guardian for the estate of such person shall terminate the secretary's authority as custodian of said funds upon receipt by the secretary of a certified copy of letters of guardianship. Upon the guardian's request, the secretary shall immediately forward to such guardian any funds of such person remaining in the secretary's possession together with full and final accounting of all receipts and expenditures made therefrom. [1971 ex.s. c 169 § 7.]

74.13.070 Moneys in possession of secretary not subject to certain proceedings. None of the moneys or other funds which come into the possession of the secretary under this 1971 amendatory act shall be subject to execution, levy, attachment, garnishment or other legal process or other operation of any bankruptcy or insolvency law. [1971 ex.s. c 169 § 8.]

Reviser's note: "this 1971 amendatory act" consists of RCW 74.08-.025, 74.08.030, 74.08.050, 74.09.510, 74.10.020, 74.12.030, 74.13.060, 74.13.070, 74.16.030, 74.36.110, 74.36.120 and 74.36.130.

ADOPTION SUPPORT DEMONSTRATION ACT OF 1971

74.13.100 State policy enunciated. It is the policy of this state to enable the secretary to charge fees for certain services to adoptive parents who are able to pay for such services.

It is, however, also the policy of this state that the secretary of the department of social and health services shall be liberal in waiving, reducing, or deferring payment of any such fee to the end that adoptions shall be encouraged in cases where prospective adoptive parents lack means.

It is the policy of this state to encourage, within the limits of available funds, the adoption of certain hard to place children in order to make it possible for children living in, or likely to be placed in, foster homes or institutions to benefit from the stability and security of

permanent homes in which such children can receive continuous parental care, guidance, protection, and love and to reduce the number of such children who must be placed or remain in foster homes or institutions until they become adults.

It is also the policy of this state to try, by means of the program of adoption support authorized in RCW 26.32.115 and 74.13.100 through 74.13.145, to reduce the total cost to the state of foster home and institutional care. [1971 ex.s. c 63 § 1.]

74.13.103 Prospective adoptive parent's fee for cost of adoption services. When a child proposed for adoption is placed with a prospective adoptive parent the department may charge such parent a fee in payment or part payment of such adoptive parent's part of the cost of the adoption services rendered and to be rendered by the department.

In charging such fees the department shall treat a husband and wife as a single prospective adoptive parent.

Each such fee shall be fixed according to a sliding scale based on the ability to pay of the prospective adoptive parent or parents.

Such fee scale shall be annually fixed by the secretary after considering the recommendations of the committee designated by the secretary to advise him on child welfare and pursuant to the regulations to be issued by the secretary in accordance with the provisions of Title 34 RCW.

The secretary may waive, defer, or provide for payment in installments without interest of, any such fee whenever in his judgment payment or immediate payment would cause economic hardship to such adoptive parent or parents.

Nothing in this section shall require the payment of a fee to the state of Washington in a case in which an adoption results from independent placement or placement by a licensed child-placing agency. [1971 ex.s. c 63 § 2.]

74.13.106 Adoption support account—Created—Source—Use—Pilot project—Federal funds—Gifts and grants. All fees paid for adoption services pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145 during the 1971–1973 and 1973–1975 fiscal bienniums shall be credited to an adoption support account, hereby created, in the general fund. Expenses incurred in connection with supporting the adoption of hard to place children shall be paid by warrants drawn against such account. The secretary may also from time to time transfer to such account from appropriations available to him for care of children in foster homes and child-caring institutions such sums as in his judgment will enable him to carry out a pilot project to demonstrate the value of a program of adoption support. In carrying out such pilot project the secretary is authorized to use the funds made available to him pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145, or, in his discretion, any portion thereof, to formulate, approve, implement or otherwise act pursuant to RCW 74.08.390, to develop and set up a pilot

adoption support project at such level as he deems appropriate, consistent with the purposes set forth in RCW 74.13.100. The secretary may develop and approve such a project whether formulated within or outside the department, and may for such purposes, contract with any public agency or licensed child placing agency and/or adoptive parent and is authorized to accept funds from other sources including federal, private and other public funding sources to carry out such project.

The secretary shall make a full report to the legislature during the 1973 and 1975 legislative sessions concerning such pilot project including an analysis by the secretary of any savings in foster care and institutional care for hard to place children realized and estimated to be realized in the future as a result of a program of adoption support of the kind provided for in RCW 26.32.115 and 74.13.100 through 74.13.145.

The secretary shall actively seek, where consistent with the policies and programs of the department, and shall make maximum use of, such federal funds as are or may be made available to the department for the purpose of supporting the adoption of hard to place children. The secretary may, if permitted by federal law, deposit federal funds for adoption support, aid to adoptions, or subsidized adoption in the adoption support account of the general fund and may use such funds, subject to such limitations as may be imposed by federal law, to carry out the program of adoption support authorized by RCW 26.32.115 and 74.13.100 through 74.13.145.

The secretary may also deposit in such account and disburse therefrom all gifts and grants from any non-federal source, including public and private foundations, which may be used for the program of adoption support authorized by RCW 26.32.115 and 74.13.100 through 74.13.145. [1973 c 61 § 1; 1971 ex.s. c 63 § 3.]

74.13.109 Rules and regulations—Agreements for disbursements from adoption support account, criteria. The secretary shall issue rules and regulations to assist in the administration of the program of adoption support authorized by RCW 26.32.115 and 74.13.100 through 74.13.145.

Disbursements from the adoption support account shall be made pursuant to such rules and regulations and pursuant to agreements conforming thereto to be made by the secretary with parents for the purpose of supporting the adoption of children in, or likely to be placed in, foster homes or child caring institutions who are found by the secretary to be difficult to place in adoption because of physical or other reasons; including, but not limited to, physical or mental handicap, emotional disturbance, ethnic background, language, race, color, age or sibling grouping.

Such agreements shall meet the following criteria:

(1) The child whose adoption is to be supported pursuant to such agreement shall be or have been a child hard to place in adoption.

(2) Such agreement must relate to a child who was or is residing in a foster home or child-caring institution or a child who, in the judgment of the secretary, is both

eligible for, and likely to be placed in, either a foster home or a child-caring institution.

(3) Such agreement shall provide that adoption support shall not continue beyond the time that the adopted child reaches twenty-one years of age, becomes emancipated, dies, or otherwise ceases to need support, provided that if the secretary shall find that continuing dependency of such child after such child reaches twenty-one years of age warrants the continuation of support pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145 the secretary may do so, subject to all the provisions of RCW 26.32.115 and 74.13.100 through 74.13.145, including annual review of the amount of such support.

(4) Any prospective parent who is to be a party to such agreement shall be a person who, while having the character, judgment, sense of responsibility, and disposition which make him or her suitable as an adoptive parent of such child, lacks the financial means fully to care for such hard to place child. [1971 ex.s. c 63 § 4.]

74.13.112 Factors determining payments or adjustment in standards. The factors to be considered by the secretary in setting the amount of any payment or payments to be made pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145 and in adjusting standards hereunder shall include: The size of the family including the adoptive child, the usual living expenses of the family, the special needs of any family member including education needs, the family income, the family resources and plan for savings, the medical and hospitalization needs of the family, the family's means of purchasing or otherwise receiving such care, and any other expenses likely to be needed by the child to be adopted.

The amounts paid for the support of a child pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145 may vary from family to family and from year to year. Due to changes in economic circumstances or the needs of the child such payments may be discontinued and later resumed.

Payments under RCW 26.32.115 and 74.13.100 through 74.13.145 may be continued by the secretary subject to review as provided for herein, if such parent or parents having such child in their custody establish their residence in another state or a foreign jurisdiction.

In fixing the standards to govern the amount and character of payments to be made for the support of adopted children pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145 and before issuing rules and regulations to carry out the provisions of RCW 26.32.115 and 74.13.100 through 74.13.145, the secretary shall consider the comments and recommendations of the committee designated by the secretary to advise him with respect to child welfare. [1971 ex.s. c 63 § 5.]

74.13.115 Both continuing payments and lump sum payments authorized. To carry out the program authorized by RCW 26.32.115 and 74.13.100 through 74.13.145, the secretary may make continuing payments or lump sum payments of adoption support. In lieu of

continuing payments, or in addition to them, the secretary may make one or more specific lump sum payments for or on behalf of a hard to place child either to the adoptive parents or directly to other persons to assist in correcting any condition causing such child to be hard to place for adoption.

After determination by the secretary of the amount of a payment or the initial amount of continuing payments, the prospective parent or parents who desire such support shall sign an agreement with the secretary providing for the payment, in the manner and at the time or times prescribed in regulations to be issued by him subject to the provisions of RCW 26.32.115 and 74.13.100 through 74.13.145, of the amount or amounts of support so determined.

Payments shall be subject to review as provided in RCW 26.32.115 and 74.13.100 through 74.13.145. [1971 ex.s. c 63 § 6.]

74.13.118 Review of support payments. At least annually the secretary shall review the need of any adoptive parent or parents receiving continuing support pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145, or the need of any parent who is to receive more than one lump sum payment where such payments are to be spaced more than one year apart. Such review shall be made not later than the anniversary date of the adoption support agreement.

At the time of such annual review and at other times during the year when changed conditions, including variations in medical opinions, prognosis and costs, are deemed by the secretary to warrant such action, appropriate adjustments in payments shall be made based upon changes in the needs of the child, in the adoptive parents' income, resources, and expenses for the care of such child or other members of the family, including medical and/or hospitalization expense not otherwise covered by or subject to reimbursement from insurance or other sources of financial assistance.

Any parent who is a party to such an agreement may at any time in writing request, for reasons set forth in such request, a review of the amount of any payment or the level of continuing payments. Such review shall be begun not later than thirty days from the receipt of such request. Any adjustment may be made retroactive to the date such request was received by the secretary. If such request is not acted on within thirty days after it has been received by the secretary, such parent may invoke his rights under the hearing provisions set forth in RCW 74.13.127. [1971 ex.s. c 63 § 7.]

74.13.121 Copy of adoptive parent's federal income tax return to be filed—Additional financial information. So long as any adoptive parent is receiving support pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145 he shall, not later than two weeks after it is filed with the United States government, file with the secretary a copy of his federal income tax return. Such return and any information thereon shall be marked by the secretary "confidential", shall be used by the secretary solely for the purposes of RCW 26.32.115 and 74.13.100 through 74.13.145, and shall not be revealed to

any other person, institution or agency, public or private, including agencies of the United States government, other than a superior court, judge or commissioner before whom a petition for adoption of a child being supported or to be supported pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145 is then pending.

In carrying on the review process authorized by RCW 26.32.115 and 74.13.100 through 74.13.145 the secretary may require the adoptive parent or parents to disclose such additional financial information, not privileged, as may enable him to make determinations and adjustments in support to the end that the purposes and policies of this state expressed in RCW 74.13.100 may be carried out, provided that no adoptive parent or parents shall be obliged, by virtue of this section, to sign any agreement or other writing waiving any constitutional right or privilege nor to admit to his or her home any agent, employee, or official of any department of this state, or of the United States government.

Such information shall be marked "confidential" by the secretary, shall be used by him solely for the purposes of RCW 26.32.115 and 74.13.100 through 74.13.145, and shall not be revealed to any other person, institution, or agency, public or private, including agencies of the United States government other than a superior court judge or commission before whom a petition for adoption of a child being supported or to be supported pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145 is then pending. [1971 ex.s. c 63 § 8.]

74.13.124 Agreements as contracts within state and federal Constitutions—State's continuing obligation.

An agreement for adoption support made pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145, although subject to review and adjustment as provided for herein, shall, as to the standard used by the secretary in making such review or reviews and any such adjustment, constitutes a contract within the meaning of section 10, Article I of the United States Constitution and section 23, Article I of the state Constitution. For that reason once such an agreement has been made any review of and adjustment under such agreement shall as to the standards used by the secretary, be made only subject to the provisions of RCW 26.32.115 and 74.13.100 through 74.13.145 and such rules and regulations relating thereto as they exist on the date of the initial determination in connection with such agreement or such more generous standard or parts of such standard as may hereafter be provided for by law or regulation. Once made such an agreement shall constitute a solemn undertaking by the state of Washington with such adoptive parent or parents. The termination of the effective period of RCW 26.32.115 and 74.13.100 through 74.13.145 or a decision by the state or federal government to discontinue or reduce general appropriations made available for the purposes to be served by RCW 26.32.115 and 74.13.100 through 74.13.145, shall not affect the state's specific continuing obligations to support such adoptions, subject to such annual review and adjustment for all such agreements as have theretofore been entered into by the state.

The purpose of this section is to assure any such parent that, upon his consenting to assume the burdens of adopting a hard to place child, the state will not in future so act by way of general reduction of appropriations for the program authorized by RCW 26.32.115 and 74.13.100 through 74.13.145 or ratable reductions, to impair the trust and confidence necessarily reposed by such parent in the state as a condition of such parent taking upon himself the obligations of parenthood of a difficult to place child.

Should the secretary and any such adoptive parent differ as to whether any standard or part of a standard adopted by the secretary after the date of an initial agreement, which standard or part is used by the secretary in making any review and adjustment, is more generous than the standard in effect as of the date of the initial determination with respect to such agreement such adoptive parent may invoke his rights, including all rights of appeal under the fair hearing provisions, available to him under RCW 74.13.127. [1971 ex.s. c 63 § 9.]

74.13.127 Voluntary amendments to agreements—Procedure when adoptive parent dissents—Appeal.

Voluntary amendments of any support agreement entered into pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145 may be made at any time. In proposing any such amending action which relates to the amount or level of a payment or payments, the secretary shall, as provided in RCW 74.13.124, use either the standard which existed as of the date of the initial determination with respect to such agreement or any subsequent standard or parts of such standard which both parties to such agreement agree is more generous than those in effect as of the date of such initial agreement.

The secretary shall seek voluntary amendment of any such agreement before invoking the additional procedures provided for in this section.

Whenever the secretary, having found an adoptive parent declines to agree to a voluntary amendment, wishes to enter an order increasing or decreasing the level of a payment or payments for the support of an adoptive child under RCW 26.32.115 and 74.13.100 through 74.13.145, he shall notify the adoptive parent of the action the secretary proposed to take in writing by certified mail or personal service stating the grounds upon which the secretary proposes such action.

Within thirty days from the receipt of such notice the adoptive parent or parents may serve upon the official of the department sending such notice a written request for hearing. Service of a request for hearing shall be made by certified mail. Upon receiving a request for hearing, such officer shall fix a hearing date, which date shall be not later than thirty-five days from the receipt by him of such request for hearing. The matter shall be heard on such date or on such date to which the matter is continued by agreement of the parties. Such official shall also notify the committee designated by the secretary to advise him on child welfare of the filing of such request not less than twenty-five days before the hearing date. If the adoptive parent agrees, a member of such committee may attend the hearing.

If no request for hearing is made within the time specified, the proposed action shall be taken and the agreement between the adoptive parent and the state shall be deemed amended accordingly.

It shall be the duty of the secretary within thirty days after the date of the hearing to notify the appellant of the decision.

The secretary shall promulgate and publish rules governing the conduct of such hearings, including provision for confidentiality.

In all other respects such proceedings shall be conducted by the department pursuant to RCW 74.08.070 and regulations issued pursuant thereto. The adoptive parent shall have a right of appeal as provided in RCW 74.08.080. If the decision of the secretary or the superior court is made in favor of the appellant, adoption support shall be paid from the effective date of the action or decision appealed from.

Except as otherwise specifically provided for in this section the rules adopted by the secretary and the manner of carrying on the proceedings shall be in accord with the provisions of Title 34 RCW. [1971 ex.s. c 63 § 10.]

74.13.130 Attorney's fees in adoption proceedings. If the secretary determines that a prospective adoptive parent or parents cannot, because of limited financial means, pay the cost or the full cost of an adoption proceeding for the adoption of a hard to place child who would be eligible for support under RCW 26.32.115 and 74.13.100 through 74.13.145, the secretary may authorize the payment from the adoption support account of all or part a reasonable attorney's fee to be determined by the superior court hearing the adoption and court costs. The clerk of the court shall furnish the secretary with a certified copy of the decree of adoption containing the finding as to such attorney's fee.

In evaluating any such prospective parent's ability to pay the secretary may use the same criteria for evaluating ability to pay which are to be used by him in waiving, reducing, or deferring fees pursuant to RCW 74.13.103 plus the burdens likely to be assumed by such parent even after adoption support is provided pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145. [1971 ex.s. c 63 § 11.]

74.13.133 Records—Confidentiality. The secretary shall keep such general records as are needed to evaluate the effectiveness of the program of adoption support authorized by RCW 26.32.115 and 74.13.100 through 74.13.145 in encouraging and effectuating the adoption of hard to place children. In so doing the secretary shall, however, maintain the confidentiality required by law with respect to particular adoptions. [1971 ex.s. c 63 § 13.]

74.13.136 Recommendations for support of the adoption of certain children. Any child-caring agency or person having a child in foster care or institutional care and wishing to recommend to the secretary support of the adoption of such child as provided for in RCW 26.32.115 and 74.13.100 through 74.13.145 may do so, and

may include in its or his recommendation advice as to the appropriate level of support and any other information likely to assist the secretary in carrying out the functions vested in the secretary by RCW 26.32.115 and 74.13.100 through 74.13.145. Such agency may, but is not required to, be retained by the secretary to make the required preplacement study of the prospective adoptive parent or parents. [1971 ex.s. c 63 § 14.]

74.13.139 "Secretary" and "department" defined. As used in RCW 26.32.115 and 74.13.100 through 74.13.145 the following definitions shall apply:

(1) "Secretary" means the secretary of the department of social and health services or his designee.

(2) "Department" means the department of social and health services. [1971 ex. s. c 63 § 15.]

74.13.142 Termination of director's authority to provide adoption support. The authority granted to the secretary in RCW 26.32.115 and 74.13.106 through 74.13.139 to provide adoption support to prospective parents who adopt hard to place children shall terminate on June 30, 1975 unless such authority is hereafter extended by law: *Provided*, That payments shall be continued by the secretary subject to annual review as provided in RCW 26.32.115 and 74.13.106 through 74.13.139 for all hard to place children for whom adoption support agreements have been entered into by the secretary on or before June 30, 1975. [1973 c 61 § 2; 1971 ex.s. c 63 § 16.]

74.13.145 Short title—1971 act. RCW 26.32.115 and 74.13.100 through 74.13.145 may be known and cited as the "Adoption Support Demonstration Act of 1971". [1971 ex.s. c 63 § 17.]

74.13.900 Severability—1965 c 30. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 c 30 § 6.]

Chapter 74.15 AGENCIES—CHILDREN, EXPECTANT MOTHERS, ADULT RETARDED—CARE, PLACEMENT

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- 74.15.140 Action against licensed or unlicensed agencies authorized.
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- 74.15.160 Continuation of existing licensing rules.
- 74.15.170 Agencies, homes conducted by religious organizations—Application of chapter.

Adoption: Chapter 26.32 RCW.

Child abuse: Chapter 26.44 RCW.

Child agencies: Chapter 26.36 RCW.

Filiation proceedings: Chapter 26.24 RCW.

Infants: Chapter 26.28 RCW.

Maternity homes: Chapter 18.46 RCW.

Protection of orphan, homeless, or neglected children: Chapter 26.37 RCW.

74.15.010 Declaration of purpose. The purpose of chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031 is:

(1) To safeguard the well-being of children, expectant mothers and adult retarded persons receiving care away from their own homes;

(2) To strengthen and encourage family unity and to sustain parental rights and responsibilities to the end that foster care is provided only when a child's family, through the use of all available resources, is unable to provide necessary care;

(3) To promote the development of a sufficient number and variety of adequate child-care and maternity-care facilities, both public and private, through the cooperative efforts of public and voluntary agencies and related groups.

(4) To provide consultation to agencies caring for children, expectant mothers or adult retarded persons in order to help them to improve their methods of and facilities for care;

(5) To license agencies as defined in RCW 74.15.020 and to assure the users of such agencies, their parents, the community at large and the agencies themselves that adequate minimum standards are maintained by all agencies caring for children, expectant mothers and adult retarded persons. [1967 c 172 § 1.]

Severability—1967 c 172: "If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 172 § 24.] This applies to RCW 74.13.031 and chapter 74.15 RCW.

74.15.020 Definitions. For the purpose of chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Department" means the state department of public assistance;

(2) "Director" means the director of the state department of public assistance;

(3) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers or adult retarded persons for control, care or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers or adult retarded persons for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency

or to the children, expectant mothers or adult retarded persons for services rendered:

(a) "Group-care facility" means an agency which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(b) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(c) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(d) "Day-care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours; and

(e) "Foster-family home" means an agency which regularly provides care during any part of the twenty-four hour day to one or more children, expectant mothers or adult retarded persons in the family abode of the person or persons under whose direct care and supervision the child, expectant mother or adult retarded person is placed.

"Agency" shall not include the following:

(a) Persons related by blood or marriage to the child, expectant mother or adult retarded persons in the following degrees: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, and/or first cousin;

(b) Persons who are legal guardians of the child, expectant mother or adult retarded persons;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person does not engage in such activity on a regular basis, or where parents on a mutually cooperative basis exchange care of one another's children, or persons who have the care of an exchange student in their own home;

(d) Nursery schools or kindergartens which are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(e) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(f) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(g) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

(h) Licensed physicians or lawyers;

(i) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

(j) Facilities approved and certified under RCW 72.33.810;

(k) Any agency having been in operation in this state ten years prior to June 8, 1967 and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund.

(4) "Requirement" means any rule, regulation or standard of care to be maintained by an agency. [1967 c 172 § 2.]

74.15.030 Powers and duties of director. The director shall have the power and it shall be his duty:

(1) In consultation with the child welfare and day care advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages, sex and other characteristics of persons served, variations in the purposes and services offered or size or structure of the agencies to be licensed hereunder, or because of any other factor relevant thereto;

(2) In consultation with the child welfare and day care advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed.

The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(b) The character, suitability and competence of an agency and other persons associated with an agency directly responsible for the care and treatment of children, expectant mothers or adult retarded persons;

(c) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;

(d) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children, expectant mothers or adult retarded persons;

(e) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;

(f) The financial ability of an agency to comply with minimum requirements established pursuant to chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031; and

(g) The maintenance of records pertaining to the admission, progress, health and discharge of persons served.

(3) To issue, revoke, or deny licenses to agencies pursuant to chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;

(4) To prescribe the procedures and the form and contents of reports necessary for the administration of chapter 74.15 RCW, RCW 74.32.040 through 74.32.055

and 74.13.031 and to require regular reports from each licensee;

(5) To inspect agencies periodically to determine whether or not there is compliance with chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031 and the requirements adopted hereunder;

(6) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation with the child welfare and day care advisory committee; and

(7) To consult with public and private agencies in order to help them improve their methods and facilities for the care of children, expectant mothers and adult retarded persons. [1967 c 172 § 3.]

74.15.040 Licenses for foster-family homes—Issuance by department. Licenses for foster-family homes under the supervision of a licensed agency shall be issued by the department of public assistance upon certification to the department by the licensed agency that such homes meet the requirements for foster homes as adopted pursuant to chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031. [1967 c 172 § 4.]

74.15.050 Fire protection—Powers and duties of state fire marshal. The state fire marshal shall have the power and it shall be his duty:

(1) In consultation with the child welfare and day care advisory committee and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt recognized minimum standard requirements pertaining to each category of agency established pursuant to chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031, except foster-family homes and child-placing agencies, necessary to protect all persons residing therein from fire hazards;

(2) To make or cause to be made such inspections and investigations of agencies, other than foster-family homes or child-placing agencies, as he deems necessary;

(3) To make a periodic review of requirements under RCW 74.15.030(6) and to adopt necessary changes after consultation as required in subsection (1) of this section;

(4) To issue to applicants for licenses hereunder, other than foster-family homes or child-placing agencies, who comply with the requirements, a certificate of compliance, a copy of which shall be presented to the department of public assistance before a license shall be issued, except that a provisional license may be issued as provided in RCW 74.15.120. [1967 c 172 § 5.]

74.15.060 Health protection—Powers and duties of secretary of social and health services. The secretary of social and health services shall have the power and it shall be his duty:

In consultation with the child welfare and day care advisory committee and with the advice and assistance of persons representative of the various type agencies to be licensed, to develop minimum requirements pertaining to each category of agency established pursuant to

chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031, necessary to promote the health of all persons residing therein.

The secretary or the city, county, or district health department designated by him shall have the power and the duty:

(1) To make or cause to be made such inspections and investigations of agencies as may be deemed necessary; and

(2) To issue to applicants for licenses hereunder who comply with the requirements adopted hereunder, a certificate of compliance, a copy of which shall be presented to the department before a license shall be issued, except that a provisional license may be issued as provided in RCW 74.15.120. [1970 ex.s. c 18 § 14; 1967 c 172 § 6.]

Effective date—Severability—1970 ex.s. c 18: See note following RCW 43.20A.010.

74.15.070 Articles of incorporation and amendments—Copies to be furnished to department. A copy of the articles of incorporation of any agency or amendments to the articles of existing corporation agencies shall be sent by the secretary of state to the department of public assistance at the time such articles or amendments are filed. [1967 c 172 § 7.]

74.15.080 Access to agencies, records. All agencies subject to chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031 shall accord the department of public assistance, the department of health, and the state fire marshal, or their designees, the right of entrance and the privilege of access to and inspection of records for the purpose of determining whether or not there is compliance with the provisions of chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031 and the requirements adopted thereunder. [1967 c 172 § 8.]

74.15.090 Licenses required. It shall hereafter be unlawful for any agency to receive children, expectant mothers or adult retarded persons for supervision or care, or arrange for the placement of such persons, unless such agency is licensed as provided in chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031. [1967 c 172 § 9.]

74.15.100 License application, issuance, duration—Reclassification. Each agency shall make application for a license or renewal of license to the department of public assistance on forms prescribed by the department. A licensed agency having foster-family homes under its supervision may make application for a license on behalf of any such foster-family home. Upon receipt of such application, the department shall either grant or deny a license within ninety days. A license shall be granted if the agency meets the minimum requirements set forth in chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031 and the departmental requirements consistent herewith, except that a provisional license may be issued as provided in RCW 74.15.120. Licenses provided for in chapter 74.15

RCW, RCW 74.32.040 through 74.32.055 and 74.13.031 shall be issued for a period of two years. The licensee, however, shall advise the director of any material change in circumstances which might constitute grounds for reclassification of license as to category. [1967 c 172 § 10.]

74.15.110 Renewal of licenses. If a licensee desires to apply for a renewal of its license, a request for a renewal shall be filed ninety days prior to the expiration date of the license. If the department has failed to act at the time of the expiration date of the license, the license shall continue in effect until such time as the department shall act. [1967 c 172 § 11.]

74.15.120 Provisional licenses. The director of public assistance may, at his discretion, issue a provisional license to an agency or facility for a period not to exceed six months, renewable for a period not to exceed two years, to allow such agency or facility reasonable time to become eligible for full license, except that a provisional license shall not be granted to any foster-family home. [1967 c 172 § 12.]

74.15.130 Licenses—Denial, suspension, revocation—Hearing. (1) An agency may be denied a license, or any license issued pursuant to chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031 may be suspended, revoked or not renewed by the director upon proof (a) that the agency has failed or refused to comply with the provisions of chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031 or the requirements promulgated pursuant to the provisions of chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031; or (b) that the conditions required for the issuance of a license under chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031 have ceased to exist with respect to such licenses;

(2) Whenever the director shall have reasonable cause to believe that grounds for denial, suspension or revocation of a license exist or that a licensee has failed to qualify for renewal of a license he shall notify the licensee in writing by certified mail, stating the grounds upon which it is proposed that the license be denied, suspended, revoked or not renewed.

Within thirty days from the receipt of notice of the grounds for denial, suspension, revocation or lack of renewal, the licensee may serve upon the director a written request for hearing. Service of a request for hearing shall be made by certified mail. Upon receiving a request for hearing, the director shall fix a date upon which the matter may be heard, which date shall be not less than thirty-five days from the receipt of the request for such hearing and he shall also notify the child welfare and day care advisory committee not less than twenty-five days before the hearing date. If no request for hearing is made within the time specified, the license shall be deemed denied, suspended or revoked. It shall be the duty of the director within thirty days after the date of the hearing to notify the appellant of his decision. The director shall promulgate and publish rules governing the conduct of hearings.

Except as specifically provided above, the rules adopted and the hearings conducted shall be in accordance with Title 34 RCW (Administrative Procedure Act). [1967 c 172 § 13.]

74.15.140 Action against licensed or unlicensed agencies authorized. Notwithstanding the existence or pursuit of any other remedy, the director may, in the manner provided by law, upon the advice of the attorney general, who shall represent the department in the proceeding, maintain an action in the name of the state for injunction or such other relief as he may deem advisable against any agency subject to licensing under the provisions of chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031 or against any such agency not having a license as heretofore provided in chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031. [1967 c 172 § 14.]

74.15.150 Penalty for operating without license. Any agency operating without a license shall be guilty of a misdemeanor. This section shall not be enforceable against an agency until sixty days after the effective date of new rules, applicable to such agency, have been adopted under chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031. [1967 c 172 § 15.]

74.15.160 Continuation of existing licensing rules. Existing rules for licensing adopted pursuant to chapter 74.14 RCW, sections 74.14.010 through 74.14.150, chapter 26, Laws of 1959, shall remain in force and effect until new rules are adopted under chapter 74.15 RCW, RCW 74.32.040 through 74.32.055 and 74.13.031, but not thereafter. [1967 c 172 § 16.]

74.15.170 Agencies, homes conducted by religious organizations—Application of chapter. Nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents of any agency, children's institution, child placing agency, maternity home, day or hourly nursery, foster home or other related institution conducted for or by members of a recognized religious sect, denomination or organization which in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion, nor shall the existence of any of the above conditions militate against the licensing of such a home or institution. [1967 c 172 § 21.]

Chapter 74.16 AID TO BLIND PERSONS

Sections

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74.16.040	Examination of applicant's eyes.
74.16.170	Prevention of blindness.
74.16.181	Vocational training—Self-support, self-care—Program of services authorized.
74.16.183	Vocational training—Eligibility for vocational rehabilitation services.
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74.16.310 Preference in operation of vending stands in public buildings.

Blind made products—Services: Chapter 19.06 RCW.

Funds for assistance to blind students in institutions of higher learning: RCW 28B.10.215.

State schools for blind and deaf: Chapter 72.40 RCW.

74.16.030 Eligibility. In addition to meeting the eligibility requirements of RCW 74.08.025, an applicant for aid to the blind assistance must be an applicant:

(1) Who has no vision or whose vision, with correcting glasses, is so defective as to prevent the performance of ordinary activities for which eyesight is essential; and

(2) Who is not publicly soliciting alms in any part of this state. The term "publicly soliciting" means the wearing, carrying, or exhibiting of signs denoting blindness and the carrying of receptacles for the reception of alms, or the doing of the same by proxy, or by begging: *Provided*, That no person otherwise eligible shall be deemed ineligible who has been a patient in a public hospital for a period of less than thirty days; or is employed in a shop maintained for the blind which does not furnish board or room; or attends a college or university in the state; or who pays the assistance money received to a private institution or home for his care.

(3) Who is a resident of the state of Washington. [1971 ex.s. c 169 § 9; 1967 c 78 § 1; 1965 c 128 § 1; 1959 c 26 § 74.16.030. Prior: 1953 c 174 § 21; 1941 c 170 § 1; 1937 c 132 § 8; 1935 c 106 § 2; 1933 c 102 § 3; 1921 c 72 § 3; Rem. Supp. 1941 § 10007-6.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

74.16.040 Examination of applicant's eyes. Examination of the applicant's eyes by an ophthalmologist or physician skilled in diseases of the eye or by a licensed optometrist shall be provided without charge to the applicant for aid to the blind assistance. [1959 c 26 § 74.16.040. Prior: 1953 c 174 § 22; 1951 1st ex.s. c 5 § 1; 1941 c 170 § 2; 1937 c 132 § 9; Rem. Supp. 1941 § 10007-7.]

Welfare agencies may not discriminate between licensed ocular practitioners: RCW 18.53.160.

74.16.170 Prevention of blindness. In cooperation with the department of public health, there shall be established and maintained such service as is needed looking toward the prevention of blindness, the purpose of which shall be to determine the causes of blindness, and to inaugurate and cooperate in any preventive measures for the state of Washington as may appear practicable. Whenever a blind or partially blind person can be benefited by medical or surgical treatment for which he is unable to pay, arrangement shall be made for an examination, with the consent of the individual, and for the necessary treatment by an ophthalmologist or physician skilled in the diseases of the eye. [1959 c 26 § 74.16.170. Prior: 1937 c 132 § 3; RRS § 10007-1.]

74.16.181 Vocational training—Self-support, self-care—Program of services authorized. The department of public assistance, services for the blind, may maintain or cause to be maintained in cooperation with the

division of vocational rehabilitation of the state department of public instruction a program of services to assist visually handicapped persons to overcome vocational handicaps and to obtain the maximum degree of self-support and self-care, under which program the department may:

(1) Furnish diagnostic evaluation to determine the nature and scope of services to be provided.

(2) Provide physical restoration to eliminate or minimize the effects of the handicap.

(3) Provide for special education and/or training in the professions, business or trades under a vocational rehabilitation plan, and if the same cannot be obtained within the state, provisions shall be made for such purposes outside of the state. Living maintenance during the period of such education and/or training within or without the state may be furnished.

(4) Establish, construct, and/or maintain one or more rehabilitation centers, training centers and/or workshops to teach visually handicapped persons to prepare for and maintain trades or occupations when such training is feasible and will contribute to the efficiency and/or support of such visually handicapped persons, to provide employment for them and to devise means for the sale and distribution of their products.

(5) Provide teacher-counselor services and teaching of subjects which will assist visually handicapped persons in the ease and enjoyment of daily living.

(6) Place visually handicapped persons in jobs and/or business enterprises in accordance with the abilities and interests of the applicant therefor.

(7) Teach visually handicapped persons trades or occupations which may be followed in their homes and to assist them in whatever manner may seem advisable in disposing of the products of their home industries.

(8) Aid individual visually handicapped persons or groups of visually handicapped persons to engage in gainful occupations by furnishing materials, equipment, goods or services to them, by providing such financial assistance as may be necessary to encourage and equip them to reach an objective established for them by the agency.

(9) Services provided for under this section may be furnished to clients from other agencies of this or other states for a fee which shall not be less than the actual costs of such services. [1967 c 59 § 1.]

Office of vocational rehabilitation: Chapter 28A.10 RCW.

Vocational rehabilitation and services for handicapped persons: Chapter 28A.10 RCW.

74.16.183 Vocational training—Eligibility for vocational rehabilitation services. An applicant for vocational rehabilitation services must be an applicant:

Who has no vision or whose vision with correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential or who has an eye condition of a progressive nature which may lead to blindness. [1967 c 59 § 2.]

74.16.190 Home industries revolving fund. The department may create an operating fund of fifteen thousand dollars from any money appropriated for the blind

to be used to create a home industries revolving fund for the purpose of advancing the cost of production and wages for the blind engaged in industry under the supervision of the department and to promote the sale of articles produced by such industry. All moneys received from the sale of articles produced in industries of the blind under the supervision of the department shall be deposited in the home industries revolving fund. [1959 c 26 § 74.16.190. Prior: 1953 c 174 § 46; 1939 c 75 § 1; 1937 c 132 § 5; RRS § 10007-2a.]

74.16.300 Services provided to help attain self-care.

The department is authorized to provide social and related services as are reasonably necessary to the end that applicants for or recipients of aid to the blind assistance are helped to attain self-care. [1959 c 26 § 74.16.300. Prior: 1957 c 63 § 9.]

74.16.310 Preference in operation of vending stands in public buildings. Preference shall be given to blind persons licensed by the state pursuant to the provisions of Public Law 732, 74th Congress, 49 Stat. 1559, as amended by section 4 of Public Law 565, 83rd Congress, 68 Stat. 663; 20 U.S.C., 107, in the operation of vending stands operated by not more than two persons in public buildings owned by the state of Washington or any county, city, or political subdivision.

The department shall promulgate rules and regulations designed to assure such preference for such licensed blind persons insofar as feasible but shall not in any way interfere with any existing business operations of any persons operating vending stands in such premises on or before the effective date of this amendatory act. [1963 c 144 § 1.]

Reviser's note: ". . . the effective date of this amendatory act", was June 13, 1963 (midnight, June 12th) see preface 1963 session laws.

Chapter 74.20

SUPPORT OF DEPENDENT CHILDREN

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74.20.250	Petition for support order by married parent with minor or legally adopted children who are receiving public assistance—Waiver of filing fees.
74.20.260	Financial statements by parent whose absence is basis of application for public assistance.
74.20.270	Scale of suggested minimum contributions.

- 74.20.280 Central unit for information and administration—Cooperation enjoined—Availability of records.
74.20.300 Department exempt from fees.

Aid to dependent children: Chapter 74.12 RCW.

74.20.010 Purpose—Chapter to be liberally construed. It is the responsibility of the state of Washington through the state department of public assistance to conserve the expenditure of public assistance funds, whenever possible, in order that such funds shall not be expended if there are private funds available or which can be made available by judicial process or otherwise to partially or completely meet the financial needs of the children of this state. The failure of parents to provide adequate financial support and care for their children is a major cause of financial dependency and a contributing cause of social delinquency.

The purpose of this chapter is to provide the state of Washington, through the department of public assistance, a more effective and efficient way to effect the support of dependent children by the person or persons who, under the law, are primarily responsible for such support and to lighten the heavy burden of the taxpayer, who in many instances is paying toward the support of dependent children while those persons primarily responsible are avoiding their obligations. It is the intention of the legislature that the powers delegated to the said department in this chapter be liberally construed to the end that persons legally responsible for the care and support of children within the state be required to assume their legal obligations in order to reduce the financial cost to the state of Washington in providing public assistance funds for the care of children. [1963 c 206 § 1; 1959 c 322 § 3.]

74.20.020 Definitions. For the purposes of this chapter a dependent child shall mean a child who is in financial need as determined by the department pursuant to Title 74 RCW. [1963 c 206 § 2; 1959 c 322 § 3.]

74.20.040 Duty of department to enforce child support—Support enforcement services. Whenever the department of social and health services receives an application for public assistance on behalf of a child and it shall appear to the satisfaction of the department that said child has been abandoned by its parents or that the child and one parent have been abandoned by the other parent or that the parent or other person who has a responsibility for the care, support, or maintenance of such child has failed or neglected to give proper care or support to such child, the department shall take appropriate action under the provisions of this chapter, the abandonment or nonsupport statutes, or other appropriate statutes of this state to insure that such parent or other person responsible shall pay for the care, support, or maintenance of said dependent child.

The secretary may accept applications for support enforcement services on behalf of persons who are not recipients of public assistance and may take action as he deems appropriate to establish or enforce support obligations against persons owing a duty to pay support. Action may be taken under the provisions of chapter 74.20 RCW, the abandonment or nonsupport

statutes, or other appropriate statutes of this state, including but not limited to remedies established in chapter 74.20A RCW, to establish and enforce said support obligations. The secretary may establish by regulation, such reasonable standards as he deems necessary to limit applications for support enforcement services. Said standards shall take into account the income, property, or other resources already available to support said person for whom a support obligation exists.

The secretary may charge a fee to compensate the department for services rendered in establishment of or enforcement of support obligations. This fee shall be agreed on in writing with the custodian or guardian of the person for whom a support obligation is owed, or that person if no custodian or guardian exists and shall be limited to not more than ten percent of any support money collected as a result of action taken by the secretary. The secretary shall by regulation establish reasonable fees for support enforcement services and said schedule of fees shall be made available to all applicants for support enforcement services. The secretary may, on showing of necessity, waive or defer any such fee. [1973 1st ex.s. c 183 § 1; 1971 ex.s. c 213 § 1; 1963 c 206 § 3; 1959 c 322 § 5.]

74.20.060 Cooperation by person having custody of child—Penalty. Any person having the care, custody or control of any dependent child or children who shall fail or refuse to cooperate with the department of public assistance, any prosecuting attorney or the attorney general in the course of administration of provisions of this chapter shall be guilty of a misdemeanor. [1959 c 322 § 7.]

74.20.101 Payment of support moneys collected to support enforcement and collections unit—Notice. Whenever, as a result of any action, support money is paid by the person or persons responsible for support, such payment shall be paid through the support enforcement and collections unit of the state department of social and health services upon written notice by the department to the responsible person or to the clerk of the court, if appropriate, that the children for whom a support obligation exists are receiving public assistance. [1973 1st ex.s. c 183 § 2; 1969 ex.s. c 173 § 16.]

74.20.160 Department may disclose information to internal revenue department. Notwithstanding the provisions of RCW 74.04.060, upon approval of the department of health, education and welfare of the federal government, the department of public assistance may disclose to and keep the internal revenue department of the treasury of the United States advised of the names of all persons who are under legal obligation to support any dependent child or children and who are not doing so, to the end that the internal revenue department may have available to it the names of such persons for review in connection with income tax returns and claims of dependencies made by persons filing income tax returns. [1963 c 206 § 5; 1959 c 322 § 17.]

74.20.210 Attorney general may act under Uniform Reciprocal Enforcement of Support Act pursuant to agreement with prosecuting attorney. The prosecuting attorney of any county except class AA counties may enter into an agreement with the attorney general whereby the duty to initiate petitions for support authorized under the provisions of chapter 26.21 RCW as it is now or hereafter amended (Uniform Reciprocal Enforcement of Support Act) in cases where the petitioner has applied for or is receiving public assistance on behalf of a dependent child or children shall become the duty of the attorney general. Any such agreement may also provide that the attorney general has the duty to represent the petitioner in intercounty proceedings within the state initiated by the attorney general which involve a petition received from another county. Upon the execution of such agreement, the attorney general shall be empowered to exercise any and all powers of the prosecuting attorney in connection with said petitions. [1969 ex.s. c 173 § 14; 1963 c 206 § 6.]

74.20.220 Powers of department through the attorney general. In order to carry out its responsibilities imposed under this chapter, the state department of public assistance, through the attorney general, is hereby authorized to:

(1) Represent a dependent child or dependent children on whose behalf public assistance is being provided in obtaining any support order necessary to provide for his or their needs or to enforce any such order previously entered.

(2) Appear as a friend of the court in divorce and separate maintenance suits, or proceedings supplemental thereto, when either or both of the parties thereto are receiving public assistance, for the purpose of advising the court as to the financial interest of the state of Washington therein.

(3) Appear on behalf of the custodial parent of a dependent child or children on whose behalf public assistance is being provided, when so requested by such parent, for the purpose of assisting such parent in securing a modification of a divorce or separate maintenance decree wherein no support, or inadequate support, was given for such child or children: *Provided*, That the attorney general shall be authorized to so appear only where it appears to the satisfaction of the court that the parent is without funds to employ private counsel. If the parent does not request such assistance, or refuses it when offered, the attorney general may nevertheless appear as a friend of the court at any supplemental proceeding, and may advise the court of such facts as will show the financial interest of the state of Washington therein; but the attorney general shall not otherwise participate in the proceeding.

(4) If public assistance has been applied for or granted on behalf of a child of parents who are divorced or legally separated, the attorney general may apply to the superior court in such action for an order directing either parent or both to show cause:

(a) Why an order of support for the child should not be entered, or

(b) Why the amount of support previously ordered should not be increased, or

(c) Why the parent should not be held in contempt for his failure to comply with any order of support previously entered.

(5) Initiate any civil proceedings deemed necessary by the department to secure reimbursement from the parent or parents of minor dependent children for all moneys expended by the state in providing assistance or services to said children. [1973 1st ex.s. c 154 § 112; 1969 ex.s. c 173 § 15; 1963 c 206 § 7.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

74.20.230 Petition for support order by married parent with minor or legally adopted children who are receiving public assistance. Any married parent with minor children, natural or legally adopted children who is receiving public assistance may apply to the superior court of the county in which such parent resides or in which the spouse may be found for an order upon such spouse, if such spouse is the natural or adoptive mother or father of such children, to provide for such spouse's support and the support of such spouse's minor children by filing in such county a petition setting forth the facts and circumstances upon which such spouse relies for such order. If it appears to the satisfaction of the court that such parent is without funds to employ counsel, the state department of social and health services through the attorney general may file such petition on behalf of such parent. If satisfied that a just cause exists, the court shall direct that a citation issue to the other spouse requiring such spouse to appear at a time set by the court to show cause why an order of support should not be entered in the matter. [1973 1st ex.s. c 154 § 113; 1963 c 206 § 8.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

74.20.240 Petition for support order by married parent with minor or legally adopted children who are receiving public assistance—Order—Powers of court. (1) After the hearing of the petition for an order of support the court shall make an order granting or denying it and fixing, if allowed, the terms and amount of the support. (2) The court has the same power to compel the attendance of witnesses and the production of testimony as in actions and suits, to make such decree or orders as are equitable in view of the circumstances of both parties and to punish violations thereof as other contempts are punished. [1963 c 206 § 9.]

74.20.250 Petition for support order by married parent with minor or legally adopted children who are receiving public assistance—Waiver of filing fees. The court may, upon satisfactory showing that the petitioner is without funds to pay the filing fee, order that the petition and other papers be filed without payment of the fee. [1963 c 206 § 10.]

74.20.260 Financial statements by parent whose absence is basis of application for public assistance. Any parent in the state whose absence is the basis upon which an application is filed for public assistance on behalf of a child shall be required to complete a statement, under oath, of his current monthly income, his total income over the past twelve months, the number of dependents for whom he is providing support, the amount he is contributing regularly toward the support of all children for whom application for such assistance is made, his current monthly living expenses and such other information as is pertinent to determining his ability to support his children. Such statement shall be provided upon demand made by the state department of public assistance or attorney general, and if assistance based upon such application is granted on behalf of such child, additional statements shall be filed annually thereafter with the state department of public assistance until such time as the child is no longer receiving such assistance. Failure to comply with this section shall constitute a misdemeanor. [1963 c 206 § 11.]

74.20.270 Scale of suggested minimum contributions. The state department of public assistance shall establish a scale of suggested minimum contributions to assist counties and courts in determining the amount that a parent should be expected to contribute toward the support of his child under this chapter. The scale shall include consideration of gross income, shall authorize an expense deduction for determining net income, shall designate other available resources to be considered, and shall specify the circumstances which should be considered in reducing such contributions on the basis of hardship.

The state department of public assistance shall accept and compile any pertinent and reliable information from any available source in order to establish such minimum scale of suggested contributions, and copies of the scale shall be made available to courts, county offices, prosecuting attorneys and, upon request, to any other state or county officer or agency engaged in the administration or enforcement of this chapter in any manner and attorneys admitted to practice in the state of Washington.

It is intended that the use of the scale formulated pursuant to this section be optional, and that no county, court, officer or agency be required to use said scale unless they so desire. [1963 c 206 § 12.]

74.20.280 Central unit for information and administration—Cooperation enjoined—Availability of records. The department is authorized and directed to establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, to coordinate and supervise departmental activities in relation to deserting parents and to assure effective cooperation with law enforcement agencies.

To effectuate the purposes of this section, the director may request from state, county and local agencies all

information and assistance as authorized by this chapter. All state, county and city agencies, officers and employees shall cooperate in the location of parents who have abandoned or deserted, or are failing to support, children receiving public assistance and shall on request supply the state department of public assistance with all information on hand relative to the location, income and property of such parents, notwithstanding any provision of law making such information confidential.

Any records established pursuant to the provisions of this section shall be available only to the attorney general, prosecuting attorneys, and courts having jurisdiction in support and/or abandonment proceedings or actions, or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules and regulations of the department and by the provisions of the federal social security act. [1963 c 206 § 13.]

74.20.300 Department exempt from fees. No filing or recording fees, court fees, fees for making copies of documents or fees for service of process shall be required from the state department of social and health services by any county clerk, county auditor, sheriff or other county officer for the filing of any actions or documents authorized by this chapter, or for the service of any summons or other process in any action or proceeding authorized by this chapter. [1973 1st ex.s. c 183 § 3; 1963 c 206 § 15.]

Chapter 74.20A SUPPORT OF DEPENDENT CHILDREN— ALTERNATIVE METHOD—1971 ACT

Sections

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- 74.20A.020 Definitions.
- 74.20A.030 Payment of public assistance for child constitutes debt to department by natural or adoptive parents—Limitations—Department subrogated to rights.
- 74.20A.040 Notice of support debt based upon subrogation to or assignment of judgment—Service or mailing—Contents—Action on, when.
- 74.20A.050 Notice of support debt based upon payment of public assistance—Service—Contents—Collection warrant—Fair hearing—Filing and serving of liens—Bond to release liens.
- 74.20A.055 Notice and finding of financial responsibility of responsible parent—Alternative procedure.
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 74.20A.900 Severability—Alternative when method of notification held invalid.

74.20A.010 Purpose—Remedies additional. Common law and statutory procedures governing the remedies for enforcement of support for financially dependent minor children by responsible parents have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, prosecuting attorneys, and the attorney general has made such remedies uncertain, slow and inadequate, thereby resulting in a growing burden on the financial resources of the state, which is constrained to provide public assistance grants for basic maintenance requirements when parents fail to meet their primary obligations. The state of Washington, therefore, exercising its police and sovereign power, declares that the common law and statutory remedies pertaining to family desertion and nonsupport of minor dependent children shall be augmented by additional remedies directed to the real and personal property resources of the responsible parents. In order to render resources more immediately available to meet the needs of minor children, it is the legislative intent that the remedies herein provided are in addition to, and not in lieu of, existing law. It is declared to be the public policy of this state that this chapter be construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through welfare programs. [1971 ex.s. c 164 § 1.]

74.20A.020 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

- (1) "Department" means the state department of social and health services.
- (2) "Secretary" means the secretary of the department of social and health services, his designee or authorized representative.
- (3) "Dependent child" means any person under the age of twenty-one who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States.
- (4) "Superior court order" means any judgment or order of the superior court of the state of Washington or an order of a court of comparable jurisdiction of another state ordering payment of a set or determinable amount of support moneys.

(5) "Responsible parent" means the natural or adoptive parent of a dependent child. [1971 ex.s. c 164 § 2.]

74.20A.030 Payment of public assistance for child constitutes debt to department by natural or adoptive parents—Limitations—Department subrogated to rights. Except as provided in this section and in *section 27 of this 1973 amendatory act, any payment of public assistance money made to or for the benefit of any dependent child or children creates a debt due and owing to the department by the natural or adoptive parent or parents who are responsible for support of such children in an amount equal to the amount of public assistance money so paid: *Provided*, That where there has been a superior court order, the debt shall be limited to the amount provided for by said order. The department shall have the right to petition the appropriate superior court for modification of a superior court order on the same grounds as a party to said cause. Where a child has been placed in foster care, and a written agreement for payment of support has been entered into by the responsible parent or parents and the department, the debt shall be limited to the amount provided for in said agreement: *Provided*, That if a court order for support is or has been entered, the provisions of said order shall prevail over the agreement. The department shall adopt rules and regulations, based on ability to pay, with respect to the level of support to be provided for in such agreements, or modifications of such agreements based on changed circumstances.

The department shall be subrogated to the right of said child or children or person having the care, custody, and control of said child or children to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the state of Washington to obtain reimbursement of moneys thus expended. If a superior court order enters judgment for an amount of support to be paid by an obligor parent, the department shall be subrogated to the debt created by such order, and said money judgment shall be deemed to be in favor of the department. This subrogation shall specifically be applicable to temporary spouse support orders, family maintenance orders and alimony orders up to the amount paid by the department in public assistance moneys to or for the benefit of a dependent child or children but allocated to the benefit of said children on the basis of providing necessities for the caretaker of said children.

Debt under this section shall not be incurred by nor at any time be collected from a parent or other person who is the recipient of public assistance moneys for the benefit of minor dependent children for the period such person or persons are in such status. [1973 1st ex.s. c 183 § 4; 1971 ex.s. c 164 § 3.]

*Reviser's note: "section 27 of this 1973 amendatory act" referred to herein was vetoed and thus failed to become law.

74.20A.040 Notice of support debt based upon subrogation to or assignment of judgment—Service or mailing—Contents—Action on, when. The secretary may issue a notice of a support debt accrued and/or accruing based upon subrogation to or assignment of

the judgment created by a superior court order. Said notice may be served upon the debtor in the manner prescribed for the service of a summons in a civil action or be mailed to the debtor at his last known address by certified mail, return receipt requested, demanding payment within twenty days of the date of receipt. Said notice of debt shall include a statement of the support debt accrued and/or accruing, computable on the amount required to be paid under any superior court order to which the department is subrogated or has an assigned interest; a statement that the property of the debtor is subject to collection action; a statement that the property is subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver; and a statement that the net proceeds will be applied to the satisfaction of the support debt. Action to collect said subrogated or assigned support debt by lien and foreclosure, or distraint, seizure and sale, or order to withhold and deliver shall be lawful after twenty days from the date of service upon the debtor or twenty days from the receipt or refusal by the debtor of said notice of debt. [1973 1st ex.s. c 183 § 5; 1971 ex.s. c 164 § 4.]

74.20A.050 Notice of support debt based upon payment of public assistance—Service—Contents—Collection warrant—Fair hearing—Filing and serving of liens—Bond to release liens. In the absence of a superior court order the secretary may issue a notice of a support debt accrued and/or accruing based upon payment of public assistance to or for the benefit of any dependent child or children. Said notice of debt shall be served upon the debtor in the manner prescribed for the service of summons in a civil action, including summons by publication where appropriate and necessary. The notice of debt shall include a statement of the support debt accrued and/or accruing, computable on the basis of the amount of public assistance previously paid and to be paid in the future; a statement of the amount of the monthly public assistance payment; a statement of the name of the recipient and the name of the child or children for whom assistance is being paid; a demand for immediate payment of the support debt or in the alternative, a demand that the debtor make answer within twenty days of the date of service to the secretary stating defenses to liability under RCW 74.20A.030; a statement that if no answer is made on or before twenty days from the date of the service, the support debt shall be assessed and determined subject to computation, and is subject to collection action; a statement that the property of the debtor will be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver. If no answer is had by the secretary to the notice of debt on or before twenty days of the date of service, the support debt shall be assessed and determined subject to computation and the secretary shall issue a collection warrant authorizing collection action under this chapter. If the debtor, within twenty days of date of service of the notice of debt, makes answer to the secretary alleging defenses to liability under RCW 74.20A.030, said debtor shall have the right to a fair hearing pursuant to RCW 74.08.070 and 74.08.090. The decision of the department in the

fair hearing shall establish the liability of the debtor, if any, for repayment of public assistance moneys expended to date as an assessed and determined support debt. Action by the secretary under the provisions of this chapter to collect said support debt shall be lawful from the date of issuance of the decision in the fair hearing. If the secretary reasonably believes that the debtor is not a resident of this state, or is about to move from this state, or has concealed himself, absconded, absented himself or has removed or is about to remove, secrete, waste, or otherwise dispose of property which could be made subject to collection action to satisfy the support debt, the secretary may file and serve liens pursuant to RCW 74.20A.060 and 74.20A.070 during pendency of the fair hearing or thereafter, whether or not appealed: *Provided*, That no further action under RCW 74.20A.080, 74.20A.130 and 74.20A.140 may be taken on such liens until final determination after fair hearing and/or appeal. The secretary shall in such cases, make and file in the record of the fair hearing an affidavit stating the reasons upon which said belief is founded: *Provided*, That the debtor may furnish a good and sufficient bond satisfactory to the secretary during pendency of the fair hearing, or thereafter, and in such case liens filed shall be released. If the decision of the fair hearing is in favor of the debtor, all liens filed shall be released. [1973 1st ex.s. c 183 § 6; 1971 ex.s. c 164 § 5.]

Civil procedure—Commencement of actions: Chapter 4.28 RCW.

74.20A.055 Notice and finding of financial responsibility of responsible parent—Alternative procedure. As an alternative to the hearing and appeal procedures provided in RCW 74.20A.050, the secretary may, in the absence of a superior court order, serve on the responsible parent a notice and finding of financial responsibility requiring a responsible parent to appear and show cause in a hearing held by the department why the finding of responsibility and/or the amount thereof is incorrect, should not be finally ordered, but should be rescinded or modified. This notice and finding shall relate to the support debt accrued and/or accruing under this chapter and/or RCW 26.16.205, including periodic payments to be made in the future for such period of time as the child or children of said responsible parent are in need. Said hearing shall be held pursuant to *this 1973 amendatory act, chapter 34.04 RCW, and the rules and regulations of the department, which shall provide for a fair hearing.

The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action. Any responsible parent who objects to all or any part of the notice and finding shall have the right for not more than twenty days from the date of service to request in writing a hearing, which request shall be served upon the secretary or his designee by registered or certified mail or personally. If no such request is made, the notice and finding of responsibility shall become final. If a request is made, the execution of notice and finding of responsibility shall be stayed pending the decision on such hearing, or any direct appeal to the courts from that

decision. Hearings may be held in the county of residence or other place convenient to the responsible parent. Any such hearing shall be a "contested case" as defined in RCW 34.04.010. The notice and finding of financial responsibility shall set forth the amount the department has determined the responsible parent owes, the support debt accrued and/or accruing, and, as appropriate, the amount to be paid thereon each month, all computable on the basis of the amount of the monthly public assistance payment previously paid, or need alleged, and the ability of the responsible parent to pay all, or any portion of the amount so paid and/or being paid and/or to be paid. The notice and finding shall also include a statement of the name of the recipient or custodian and the name of the child or children for whom assistance is being paid or need is alleged; and/or a statement of the amount of periodic future support payments as to which financial responsibility is found.

The notice and finding shall include a statement that the responsible parent may object to all or any part of the notice and finding, request a hearing to show cause why said responsible parent should not be determined to be liable for any or all of the debt, past and future, determined, and the amount to be paid thereon.

The notice and finding shall also include a statement that if the responsible parent fails to request a hearing that the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed and determined and ordered by the department and that this debt shall be subject to collection action; a statement that the property of the debtor, without further advance notice or hearing, will be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver to satisfy the debt.

If a hearing is requested, it shall be promptly scheduled, in no more than thirty days. The hearing examiner shall determine the liability and responsibility, if any, of the alleged responsible parent under RCW 74.20A.030, and shall also determine the amount of periodic payments to be made to satisfy past, present or future liability under RCW 74.20A.030 and/or 26.16.205. In making these determinations, the hearing examiner shall include in his considerations (1) the necessities and requirements of the child or children, exclusive of any income of the custodian of said child or children, (2) the amount of support debt claimed, (3) the public policy and intent of the legislature to require that children be maintained from the resources of responsible parents thereby relieving to the greatest extent possible the burden borne by the general citizenry through welfare programs, and (4) the abilities and resources of the responsible parent.

If the responsible parent fails to appear at the hearing, upon a showing of valid service, the hearing examiner shall enter a decision and order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed and determined and subject to collection action. Within fifteen days of entry of said decision and order, the responsible parent may petition the department to vacate

said decision and order upon a showing of any of the grounds enumerated in RCW 4.72.010.

The hearing examiner shall, within twenty days of the hearing, enter findings, conclusions and a final decision determining liability and responsibility and/or future periodic support payments. The determination of the hearing examiner entered pursuant to this section shall be entered as a decision and order and shall limit the support debt under RCW 74.20A.030 to the amounts stated in said decision: *Provided*, That said decision establishing liability and/or future periodic support payments shall be superseded upon entry of a superior court order for support to the extent the superior court order is inconsistent with the hearing order or decision: *Provided further*, That in the absence of a superior court order either the responsible parent or the department may petition the secretary or his designee for issuance of an order to appear and show cause based on a showing of good cause and material change of circumstances, to require the other party to appear and show cause why the decision previously entered should not be prospectively modified. Said order to appear and show cause together with a copy of the affidavit upon which the order is based shall be served in the manner of a summons in a civil action on the other party by the petitioning party. A hearing shall be set not less than fifteen nor more than thirty days from the date of service, unless extended for good cause shown. Prospective modification may be ordered, but only upon a showing of good cause and material change of circumstances.

The department, in its original determinations, and the hearing examiner in making determinations based on objections to original determinations or on petitions to modify, shall consider the standards promulgated pursuant to RCW 74.20.270 and any standards for determination of support payments used by the superior court of the county of residence of the responsible parent.

Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this chapter without further necessity of action by the hearing examiner.

"Need" as used in this section shall mean the necessary costs of food, clothing, shelter and medical attendance for the support of a dependent child or children. [1973 1st ex.s. c 183 § 25.]

***Reviser's note:** "this 1973 amendatory act" consists of the amendments to RCW 74.20.040, 74.20.101, 74.20.300, 74.20A.030-74.20A.100, 74.20A.130-74.20A.150, and 74.20A.170-74.20A.250 by 1973 1st ex.s. c 183, and to RCW 74.20A.055 and 74.20A.260.

74.20A.060 Assertion of lien—Effect. Twenty-one days after receipt or refusal of notice of debt under provisions of RCW 74.20A.040, or twenty-one days after service of notice of debt, or as otherwise appropriate under the provisions of RCW 74.20A.050, or as appropriate under the provisions of *section 27 of this 1973 amendatory act a lien may be asserted by the secretary upon the real or personal property of the debtor. The claim of the department for a support debt, not paid when due, shall be a lien against all property of the debtor with priority of a secured creditor. This lien shall

be separate and apart from, and in addition to, any other lien created by, or provided for, in this title. The lien shall attach to all real and personal property of the debtor on the date of filing of such statement with the county auditor of the county in which such property is located. A lien against earnings shall attach and be effective subject to service requirements of RCW 74.20A.070 upon filing with the county auditor of the county in which the employer does business or maintains an office or agent for the purpose of doing business.

Whenever a support lien has been filed and there is in the possession of any person, firm, corporation, association, political subdivision or department of the state having notice of said lien any property which may be subject to the support lien, such property shall not be paid over, released, sold, transferred, encumbered or conveyed, except as provided for by the exemptions contained in RCW 74.20A.090 and 74.20A.130, unless a written release or waiver signed by the secretary has been delivered to said person, firm, corporation, association, political subdivision or department of the state or unless a determination has been made in a fair hearing pursuant to RCW 74.20A.050 or by a superior court ordering release of said support lien on the basis that no debt exists or that the debt has been satisfied. [1973 1st ex.s. c 183 § 7; 1971 ex.s. c 164 § 6.]

***Reviser's note:** "section 27 of this 1973 amendatory act" referred to herein was vetoed and thus failed to become law.

74.20A.070 Service of lien. The secretary may at any time after filing of a support lien serve a copy of said lien upon any person, firm, corporation, association, political subdivision or department of the state in possession of earnings, or deposits or balances held in any bank account of any nature which are due, owing, or belonging to said debtor. Said support lien shall be served upon the person, firm, corporation, association, political subdivision or department of the state either in the manner prescribed for the service of summons in a civil action or by certified mail, return receipt requested. No lien filed under RCW 74.20A.060 shall have any effect against earnings or bank deposits or balances unless it states the amount of the support debt accrued and unless service upon said person, firm, corporation, association, political subdivision or department of the state in possession of earnings or bank accounts, deposits or balances is accomplished pursuant to this section. [1973 1st ex.s. c 183 § 8; 1971 ex.s. c 164 § 7.]

Civil procedure—Commencement of actions: Chapter 4.28 RCW.

74.20A.080 Order to withhold and deliver—Issue and service—Contents—Effect—Delivery of property—Bond to release. After service of a notice of debt as provided for in RCW 74.20A.040 stating a support debt accrued and/or accruing based upon subrogation to or assignment of the amount required to be paid under any superior court order or whenever a support lien has been filed pursuant to RCW 74.20A.060, the secretary is hereby authorized to issue to any person, firm, corporation, association, political subdivision or department of the state, an order to withhold and

deliver property of any kind including, but not restricted to, earnings which are due, owing, or belonging to the debtor, when the secretary has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision or department of the state property which is due, owing, or belonging to said debtor. The order to withhold and deliver which shall also be served upon the debtor, shall state the amount of the support debt accrued, and shall state in summary the terms of RCW 74.20A.090 and 74.20A.100. The order to withhold and deliver shall be served in the manner prescribed for the service of a summons in a civil action or by certified mail, return receipt requested. Any person, firm, corporation, association, political subdivision or department of the state upon whom service has been made is hereby required to answer said order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein. In the event there is in the possession of any such person, firm, corporation, association, political subdivision or department of the state any property which may be subject to the claim of the department of social and health services, such property shall be withheld immediately upon receipt of the order to withhold and deliver and shall after the twenty day period, upon demand, be delivered forthwith to the secretary. The secretary shall hold said property in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability. In the alternative, there may be furnished to the secretary a good and sufficient bond, satisfactory to the secretary, conditioned upon final determination of liability. Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision or department of the state subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the secretary. Delivery to the secretary of the money or other property held or claimed shall satisfy the requirement of the order to withhold and deliver. Delivery to the secretary shall serve as full acquittance and the state warrants and represents that it shall defend and hold harmless for such actions persons delivering money or property to the secretary pursuant to this chapter. The state also warrants and represents that it shall defend and hold harmless for such actions persons withholding money or property pursuant to this chapter. The foregoing is subject to the exemptions contained in RCW 74.20A.090 and 74.20A.130. [1973 1st ex.s. c 183 § 9; 1971 ex.s. c 164 § 8.]

Civil procedure—Commencement of actions: Chapter 4.28 RCW.

74.20A.090 Certain amount of earnings exempt from lien or order—"Earnings" and "disposable earnings" defined. Whenever a support lien or order to withhold and deliver is served upon any person, firm, corporation, association, political subdivision or department of the state asserting a support debt against earnings and

there is in the possession of such person, firm, corporation, association, political subdivision, or department of the state, any such earnings, RCW 7.33.280 shall not apply, but fifty percent of the disposable earnings shall be exempt and may be disbursed to the debtor whether such earnings are paid, or to be paid weekly, monthly, or at other regular intervals and whether there be due the debtor earnings for one week or for a longer period. The lien or order to withhold and deliver shall continue to operate and require said person, firm, corporation, association, political subdivision, or department of the state to withhold the nonexempt portion of earnings at each succeeding earnings disbursement interval until the entire amount of the support debt stated in the lien or order to withhold and deliver has been withheld. As used in this chapter, the term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments by any department or division of the state based upon inability to work or obtain employment. Earnings shall specifically include all gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital assets. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount be required by law to be withheld. [1973 1st ex.s. c 183 § 10; 1971 ex.s. c 164 § 9.]

74.20A.100 Civil liability upon failure to comply with order or lien. Should any person, firm, corporation, association, political subdivision or department of the state fail to make answer to an order to withhold and deliver within the time prescribed herein; or fail or refuse to deliver property pursuant to said order; or after actual notice of filing of a support lien, pay over, release, sell, transfer, or convey real or personal property subject to a support lien to or for the benefit of the debtor or any other person; or fail or refuse to surrender upon demand property distrained under RCW 74.20A.130 or fail or refuse to honor an assignment of wages presented by the secretary, said person, firm, corporation, association, political subdivision or department of the state shall be liable to the department in an amount equal to one hundred percent of the value of the debt which is the basis of the lien, order to withhold and deliver, distraint, or assignment of wages, together with costs, interest, and reasonable attorney fees. [1973 1st ex.s. c 183 § 11; 1971 ex.s. c 164 § 10.]

74.20A.110 Release of excess to debtor. Whenever any person, firm, corporation, association, political subdivision or department of the state has in its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the department plus one hundred dollars, such person, firm, corporation, association, political subdivision or department of the state may, without liability under this chapter, release said excess to the debtor. [1971 ex.s. c 164 § 11.]

74.20A.120 Banks, savings and loan associations, service effective only as to branch office served. In the case of a bank, bank association, mutual savings bank, or savings and loan association maintaining branch offices, service of a lien or order to withhold and deliver or any other notice or document authorized by this chapter shall only be effective as to the accounts, credits, or other personal property of the debtor in the particular branch upon which service is made. [1971 ex.s. c 164 § 12.]

74.20A.130 Distraint, seizure and sale of property subject to liens under RCW 74.20A.060, procedure. Whenever a support lien has been filed pursuant to RCW 74.20A.060, the secretary may collect the support debt stated in said lien by the distraint, seizure, and sale of the property subject to said lien. The secretary shall give notice to the debtor and any person known to have or claim an interest therein of the general description of the property to be sold and the time and place of sale of said property. Said notice shall be given to such persons by certified mail, return receipt requested or by service in the manner prescribed for the service of a summons in a civil action. A notice specifying the property to be sold shall be posted in at least two public places in the county wherein the distraint has been made. The time of sale shall not be less than ten nor more than twenty days from the date of posting of such notices. Said sale shall be conducted by the secretary, who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum reasonable price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the price so fixed, the secretary may declare such property to be purchased by the department for such price, or may conduct another sale of such property pursuant to the provisions of this section. In the event of sale, the debtor's account shall be credited with the amount for which the property has been sold. Property acquired by the department as herein prescribed may be sold by the secretary at public or private sale, and the amount realized shall be placed in the state general fund to the credit of the department of social and health services. In all cases of sale, as aforesaid, the secretary shall issue a bill of sale or a deed to the purchaser and said bill of sale or deed shall be prima facie evidence of the right of the secretary to make such sale and conclusive evidence of the regularity of his proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the debtor in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the department, shall be first applied by the secretary to reimbursement of the costs of distraint and sale, and thereafter in satisfaction of the delinquent account. Any excess which shall thereafter remain in the hands of the secretary shall be refunded to the debtor. Sums so refundable to a debtor may be subject to seizure or distraint by any taxing authority of the state or its political subdivisions or by the secretary for new sums due and owing subsequent to the subject proceeding. Except as specifically provided in this chapter,

there shall be exempt from distraint, seizure, and sale under this chapter such property as is exempt therefrom under the laws of this state. [1973 1st ex.s. c 183 § 12; 1971 ex.s. c 164 § 13.]

74.20A.140 Action for foreclosure of support lien—Satisfaction. Whenever a support lien has been filed, an action in foreclosure of lien upon real or personal property may be brought in the superior court of the county where real or personal property is or was located and the lien was filed and judgment shall be rendered in favor of the department for the amount due, with costs, and the court shall allow, as part of the costs, the moneys paid for making and filing the claim of lien, and a reasonable attorney's fee, and the court shall order any property upon which any lien provided for by this chapter is established, to be sold by the sheriff of the proper county to satisfy the lien and costs. The payment of the lien debt, costs and reasonable attorney fees, at any time before sale, shall satisfy the judgment of foreclosure. Where the net proceeds of sale upon application to the debt claimed do not satisfy the debt in full, the department shall have judgment over for any deficiency remaining unsatisfied and further levy and sales upon other property of the judgment debtor may be made under the same execution. In all sales contemplated under this section, advertising of notice shall only be necessary for two weeks in a newspaper published in the county where said property is located, and if there be no newspaper therein, then in the most convenient newspaper having a circulation in such county. Remedies provided for herein are alternatives to remedies provided for in other sections of this chapter. [1973 1st ex.s. c 183 § 13; 1971 ex.s. c 164 § 14.]

74.20A.150 Satisfaction of lien after foreclosure proceedings instituted—Redemption. Any person owning real property, or any interest in real property, against which a support lien has been filed and foreclosure instituted, shall have the right to pay the amount due, together with expenses of the proceedings and reasonable attorney fees to the secretary and upon such payment the secretary shall restore said property to him and all further proceedings in the said foreclosure action shall cease. Said person shall also have the right within two hundred forty days after sale of property foreclosed under RCW 74.20A.140 to redeem said property by making payment to the purchaser in the amount paid by the purchaser plus interest thereon at the rate of six percent per annum. [1973 1st ex.s. c 183 § 14; 1971 ex.s. c 164 § 15.]

74.20A.160 Secretary may set debt payment schedule. The secretary may at any time consistent with the income, earning capacity and resources of the debtor, set or reset a level and schedule of payments to be paid upon the debt. [1971 ex.s. c 164 § 16.]

74.20A.170 Secretary may release lien or order or return seized property—Effect. The secretary may at any time release a support lien, or order to withhold

and deliver, on all or part of the property of the debtor, or return seized property without liability, if assurance of payment is deemed adequate by the secretary, or if said action will facilitate the collection of the debt, but said release or return shall not operate to prevent future action to collect from the same or other property. [1973 1st ex.s. c 183 § 15; 1971 ex.s. c 164 § 17.]

74.20A.180 Secretary may make demand, file and serve liens, when payments appear in jeopardy. If the secretary finds that the collection of any support debt based upon subrogation to or assignment of the amount of support ordered by any superior court order is in jeopardy, he may make demand under RCW 74.20A.040 for immediate payment of the support debt, and upon failure or refusal immediately to pay said support debt, he may file and serve liens pursuant to RCW 74.20A.060 and 74.20A.070, without regard to the twenty day period provided for in RCW 74.20A.040: *Provided*, That no further action under RCW 74.20A.080, 74.20A.130 and 74.20A.140 may be taken until the notice requirements of RCW 74.20A.040 are met. [1973 1st ex.s. c 183 § 16; 1971 ex.s. c 164 § 18.]

74.20A.190 Interest on debts due—Waiver. Interest of six percent per annum on any support debt due and owing to the department under RCW 74.20A.030 may be collected by the secretary. No provision of this chapter shall be construed to require the secretary to maintain interest balance due accounts and said interest may be waived by the secretary, if said waiver would facilitate the collection of the debt. [1973 1st ex.s. c 183 § 17; 1971 ex.s. c 164 § 19.]

74.20A.200 Judicial relief—Limitations. Any person against whose property a support lien has been filed or an order to withhold and deliver has been served pursuant to this chapter may apply for relief to the superior court of the county wherein the property is located on the basis that no support debt is due and owing: *Provided*, That judicial relief shall not be granted except as provided for in RCW 74.08.080 whenever a fair hearing has been requested pursuant to RCW 74.20A.050. Liens filed during pendency of fair hearing or court review shall be reviewed pursuant to RCW 74.08.080. It is the intent of this chapter that jurisdictional and constitutional issues, if any, shall be subject to review, but that administrative remedies be exhausted prior to judicial review. [1973 1st ex.s. c 183 § 18; 1971 ex.s. c 164 § 20.]

74.20A.210 Unidentifiable moneys held in special account. All moneys collected in fees, costs, attorney fees, interest payments, or other funds received by the secretary which are unidentifiable as to the support account against which they should be credited, shall be held in a special fund from which the secretary may make disbursement for any costs or expenses incurred in the administration or enforcement of the provisions of this chapter. [1973 1st ex.s. c 183 § 19; 1971 ex.s. c 164 § 21.]

74.20A.220 Charging off child support debts as uncollectible. Any support debt due the department from a responsible parent which the secretary deems uncollectible may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset: *Provided*, That at any time after six years from the date a support debt was incurred, the secretary may charge off as uncollectible any support debt upon which the secretary finds there is no available, practical, or lawful means by which said debt may be collected: *Provided further*, That no proceedings or action under the provisions of this chapter may be begun after expiration of said six year period to institute collection of a support debt. Nothing herein shall be construed to render invalid or nonactionable a support lien filed prior to the expiration of said six year period or an assignment of earnings or order to withhold and deliver executed prior to the expiration of said six year period. [1973 1st ex.s. c 183 § 20; 1971 ex.s. c 164 § 22.]

74.20A.230 Employee debtor rights protected—Limitation. No employer shall discharge an employee for reason that an assignment of earnings has been presented in settlement of a support debt or that a support lien or order to withhold and deliver has been served against said employee's earnings: *Provided*, That this provision shall not apply if more than three support liens or orders to withhold and deliver are served upon the same employer within any period of twelve consecutive months. [1973 1st ex.s. c 183 § 21; 1971 ex.s. c 164 § 23.]

74.20A.240 Assignment of earnings to be honored—Effect. Any person, firm, corporation, association, political subdivision or department of the state employing a person owing a support debt or obligation, shall honor, according to its terms, a duly executed assignment of earnings presented by the secretary as a plan to satisfy or retire a support debt or obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself shall be applicable whether said earnings are to be paid presently or in the future and shall continue in force and effect until released in writing by the secretary. Payment of moneys pursuant to an assignment of earnings presented by the secretary shall serve as full acquittance under any contract of employment, and the state warrants and represents it shall defend and hold harmless such action taken pursuant to said assignment of earnings. The secretary shall be released from liability for improper receipt of moneys under an assignment of earnings upon return of any moneys so received. [1973 1st ex.s. c 183 § 22; 1971 ex.s. c 164 § 24.]

74.20A.250 Receipt of public assistance for a child as assignment of rights in support obligation—Secretary as attorney for endorsing drafts. By accepting public assistance for or on behalf of a child or children, the recipient shall be deemed to have made assignment to the department of any and all right, title, and interest in any support obligation owed to or for said child or children up to the amount of public assistance money

paid for or on behalf of said child or children for such term of time as such public assistance moneys are paid. The recipient shall also be deemed, without the necessity of signing any document, to have appointed the secretary as his or her true and lawful attorney in fact to act in his or her name, place, and stead to perform the specific act of endorsing any and all drafts, checks, money orders or other negotiable instruments representing support payments which are received on behalf of said child or children as reimbursement for the public assistance moneys previously paid to said recipient. [1973 1st ex.s. c 183 § 23; 1971 ex.s. c 164 § 25.]

74.20A.260 Industrial insurance disability compensation payments subject to lien and order to withhold and deliver. One hundred percent of the temporary total disability payments and permanent total disability compensation to a workman allocated by RCW 51.32-.090 and 51.32.060 respectively to the spouse and children of a workman, and forty percent of the net proceeds of payments to a workman for permanent partial disability under RCW 51.32.080 shall not be classified as "earnings" but shall be subject to lien or order to withhold and deliver and said lien or order to withhold and deliver shall continue to operate and require any political subdivision or department of the state to withhold the above stated portions at each subsequent disbursement or receipt interval until the entire amount of the support debt stated in the lien or order to withhold and deliver has been withheld. [1973 1st ex.s. c 183 § 24.]

74.20A.900 Severability—Alternative when method of notification held invalid. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

If any method of notification provided for in this chapter is held invalid, service as provided for by the laws of the state of Washington for service of process in a civil action shall be substituted for the method held invalid. [1971 ex.s. c 164 § 27.]

Civil procedure—Commencement of actions: Chapter 4.28 RCW.

**Chapter 74.22
WORK INCENTIVE PROGRAM FOR RECIPIENTS
OF PUBLIC ASSISTANCE**

Sections	
74.22.010	Purpose—Program consistent with federal law, when
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74.22.030	Employability plan—Service categories.
74.22.040	Special work projects—Agreements, requisites of.
74.22.050	Special work projects—Participants in project, wages—Interdepartmental payments—Supplemental earnings payments.
74.22.060	Training, incentive payments for—Federal law controls.
74.22.070	Payment of costs incidental to participation in program authorized.

- 74.22.080 Good cause for refusal of employment under program.
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 74.22.100 Refusal to participate as basis for denying public assistance—Procedure.
 74.22.110 Transfer of funds between departments authorized—Rules and regulations.
 74.22.120 Acceptance of funds authorized.

74.22.010 Purpose—Program consistent with federal law, when. The purpose of this chapter is to provide every recipient of public assistance the opportunity to find and prepare for employment: *Provided*, That recipients of aid to families with dependent children may be subject to other similar work incentive programs. As to recipients of federal-aid assistance, the employment program shall be consistent with federal law and requirements entitling the state to matching funds. [1969 c 14 § 1.]

Work incentive program for recipients of aid to families with dependent children: Chapter 74.23 RCW.

74.22.020 Employables, others, referred to department of employment security. The department of public assistance shall seek to promptly refer to the department of employment security all employable recipients and such others as are selected as being appropriate for referral in accordance with the criteria and standards established by the department of public assistance under the employment program set forth in this chapter. [1969 c 14 § 2.]

74.22.030 Employability plan—Service categories. The employment security department shall seek to develop an employability plan for such persons referred to it under RCW 74.22.020 and determine whether such individuals can be placed in one of the following three service categories: (1) Employment in the regular economy, (2) institutional and work experience training likely to lead to regular employment, or (3) a program of special work projects for individuals for whom a job in the regular economy cannot be found, in accordance with the criteria and standards established by the employment security department pursuant to the employment program. [1969 c 14 § 3.]

74.22.040 Special work projects—Agreements, requisites of. In order to develop special work projects under the employment program set forth in this chapter, the employment security department is authorized to enter into agreements with public agencies and private nonprofit organizations, and with respect to developing special work projects for Indians on a reservation, with the respective Indian tribes represented on such reservation. The work provided thereunder must serve a useful public purpose and be such that would not otherwise be performed by regular employees. [1969 c 14 § 4.]

74.22.050 Special work projects—Participants in project, wages—Interdepartmental payments—Supplemental earnings payments. With respect to those individuals who are participating in a special work project established under the employment program, set forth in

this chapter, the department of public assistance is authorized to pay the employment security department the amount of assistance the participant would otherwise be eligible to receive under his particular category of assistance or eighty percent of the participant's earnings under the project, whichever is lesser. These payments will be used by the employment security department under the special works contracts as wages to the individual participant. The department of public assistance will supplement any earnings so received by payments to the extent that such payments, when added to the earnings, will equal the amount of assistance he would otherwise qualify for under his particular category of assistance had he not participated in the project, plus twenty percent of his earnings from the project. [1969 c 14 § 5.]

74.22.060 Training, incentive payments for—Federal law controls. When permitted by federal law, the employment security department is authorized to pay to any participant under service category (2), of RCW 74.22.030, training, an incentive payment of not more than thirty dollars per month. Such incentive payments may be disregarded in determining the needs of such person under his particular category of assistance. [1969 c 14 § 6.]

74.22.070 Payment of costs incidental to participation in program authorized. The department of public assistance is authorized to pay or consider expenses for costs incidental to participation in any program under this chapter including necessary child care. [1969 c 14 § 7.]

74.22.080 Good cause for refusal of employment under program. Good cause for refusal of employment shall be deemed to exist under this chapter when: (1) The wage rate of the offered employment is substantially less favorable than that which prevails for similar work in the locality, or (2) the job is available because of a labor dispute, or (3) the job is not within the physical or mental capacity of the person, as established, when necessary, by competent professional authority, or (4) acceptance would be unreasonable because it would interrupt a program in process for permanent rehabilitation or self-support or conflict with an imminent likelihood of reemployment at the person's regular work, or (5) such employment would be inconsistent with the declared intent and purpose of this chapter. [1969 c 14 § 8.]

74.22.090 Good cause for refusal to participate in training or a special work project under program. Good cause for refusal to participate in training or a special work project shall be deemed to exist under this chapter, when: (1) Participation would be unreasonable because it would interrupt a program in process for permanent rehabilitation or self-support or conflict with an imminent likelihood of reemployment at the person's regular work, or (2) participation will be unreasonable because the assignment would not be within the physical or mental capacity of the person as established, when necessary, by competent professional authority, or

(3) such participation would be inconsistent with the declared intent and purpose of this chapter. [1969 c 14 § 9.]

74.22.100 Refusal to participate as basis for denying public assistance—Procedure. The employment security department shall notify the department of public assistance whenever any person referred under the employment program provided for in this chapter refuses to accept employment or participate in training or a special work project. If the department of public assistance determines that any such person has refused employment or participation in the program without good cause, assistance shall be denied to such person. [1969 c 14 § 10.]

74.22.110 Transfer of funds between departments authorized—Rules and regulations. The employment security department and the department of public assistance are authorized to transfer funds between the two departments and to adopt rules and regulations necessary to carry out the purpose and provisions of this chapter. [1969 c 14 § 11.]

74.22.120 Acceptance of funds authorized. The state of Washington is hereby authorized to accept federal, private, or public funds from any source, including but not limited to funds available pursuant to the Manpower Development and Training Act of 1962, as amended, to carry out the purposes of this chapter. [1969 c 14 § 12.]

Chapter 74.23

WORK INCENTIVE PROGRAM FOR RECIPIENTS OF AID TO FAMILIES WITH DEPENDENT CHILDREN

Sections

- 74.23.005 Compliance with federal act.
- 74.23.010 Purpose.
- 74.23.020 Departments authorized to participate in and administer program consistent with federal law.
- 74.23.030 Institutional and training programs and special work projects—Requisites of.
- 74.23.040 Individuals referred to appropriate public agencies.
- 74.23.050 Department's scope in placement of referrals.
- 74.23.060 Training incentives paid disregarded for public assistance purposes.
- 74.23.070 Special work projects—Participants' wages—Interdepartmental payments—Supplemental earnings payments.
- 74.23.080 Good cause for refusal of employment under program.
- 74.23.090 Good cause for refusal to participate in training or a special work project under program.
- 74.23.100 Refusal to participate as basis for denying public assistance—Procedure—Notice—Appeal—Hearings.
- 74.23.110 Refusal to participate as basis for denying public assistance—Payments discontinued, when—Protective payments.
- 74.23.120 Departmental authorization—Transfer of funds between departments—Rules and regulations.
- 74.23.900 Severability—Conflict with federal requirements.

74.23.005 Compliance with federal act. The legislature hereby expresses its intention to comply with the requirements under the federal social security act, as

amended, creating a work incentive program for recipients of aid to families with dependent children. [1969 c 15 § 1.]

74.23.010 Purpose. The purpose of this chapter is to establish a program utilizing all available manpower services, including those authorized under other provisions of law, under which individuals receiving aid to families with dependent children will be furnished incentives, opportunities, and necessary services in order to secure for such individuals (1) employment in the regular economy, (2) institutional and work experience training likely to lead to regular employment, and (3) participation in special work projects for those individuals for whom a job in the regular economy cannot be found, thus restoring the families of such individuals to independence and useful roles in their communities. It is expected that the individuals participating in the program established under this chapter will acquire a sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society and that the example of a working adult in these families will have beneficial effects on the children in such families. [1969 c 15 § 2.]

74.23.020 Departments authorized to participate in and administer program consistent with federal law. The employment security department and the department of public assistance are hereby authorized to participate in and administer the work incentive program for recipients of public assistance consistent with the provisions of the federal social security act, as amended. [1969 c 15 § 3.]

74.23.030 Institutional and training programs and special work projects—Requisites of. The institutional and work experience training programs and special work projects developed under this chapter shall be confined to programs which serve a useful public purpose, do not result either in displacement of regular workers or in the performance of work that would otherwise be performed by employees of public or private agencies, institutions, or organizations, except in cases of projects which involve emergencies or which are generally of a nonrecurring nature. [1969 c 15 § 4.]

74.23.040 Individuals referred to appropriate public agencies. The department of public assistance shall promptly seek to refer individuals who are selected as being appropriate for referral to the employment security department or other appropriate agencies for participation under the work incentive program in accordance with criteria and standards established by the department of public assistance. [1969 c 15 § 5.]

74.23.050 Department's scope in placement of referrals. The employment security department shall seek to place such persons referred to it in employment in the regular economy, in institutional and work experience training likely to lead to regular employment, and in participation in special work projects in accordance

with criteria and standards established by the employment security department pursuant to the work incentive program. [1969 c 15 § 6.]

74.23.060 Training incentives paid disregarded for public assistance purposes. Training incentives paid under the program shall be disregarded in determining the needs of the individual for public assistance, consistent with the federal social security act. [1969 c 15 § 7.]

74.23.070 Special work projects—Participants' wages—Interdepartmental payments—Supplemental earnings payments. With respect to those individuals who are participating in a special work project established under the work incentive program, the department of public assistance is authorized to pay the employment security department the amount of assistance the participant would otherwise be eligible to receive under aid to families with dependent children or eighty percent of a participant's earnings under the project, whichever is lesser. These payments will be used by the employment security department under the special work contracts as wages to the individual participant. The department of public assistance will supplement any earnings so received by payments to the extent that such payments, when added to the earnings, will equal the amount of assistance he would otherwise qualify for under aid to families with dependent children had he not participated in the project, plus twenty percent of his earnings from the project. [1969 c 15 § 8.]

74.23.080 Good cause for refusal of employment under program. Good cause for refusal of employment shall be deemed to exist under this chapter when: (1) The wage rate of the offered employment is substantially less favorable than that which prevails for similar work in the locality, or (2) the job is available because of a labor dispute, or (3) the job is not within the physical or mental capacity of the person, as established, when necessary, by competent professional authority, or (4) acceptance would be unreasonable because it would interrupt a program in process for permanent rehabilitation or self-support or conflict with an imminent likelihood of reemployment at the person's regular work, or (5) such employment would be inconsistent with the declared intent and purpose of this chapter. [1969 c 15 § 9.]

74.23.090 Good cause for refusal to participate in training or a special work project under program. Good cause for refusal to participate in training or a special work project under this chapter shall be deemed to exist, when: (1) Participation would be unreasonable because it would interrupt a program in process for permanent rehabilitation or self-support or conflict with an imminent likelihood of reemployment at the person's regular work, or (2) participation would be unreasonable because the assignment is not suited to the person's abilities or potential, or will not lead to realistic employment opportunities suited to the person's ability or

potential, or (3) such participation would be inconsistent with the declared intent and purpose of this chapter. [1969 c 15 § 10.]

74.23.100 Refusal to participate as basis for denying public assistance—Procedure—Notice—Appeal—Hearings. (1) Whenever any person referred to the employment security department under this work incentive program refuses to accept employment or participate in training or participate in a special work project without good cause as determined by the employment security department, he shall be notified in writing by said department of its determination which shall be served upon him personally or by mail. Unless appealed in writing within ten days from the date of receipt of such written determination, it shall become final.

(2) To the extent permitted by the federal social security act, as amended, the manner and conduct of hearings and administrative appeals concerning written determinations issued pursuant to this chapter shall be in accordance with hearings and administrative appeals held pursuant to the employment security act, Title 50 of the Revised Code of Washington. [1969 c 15 § 11.]

74.23.110 Refusal to participate as basis for denying public assistance—Payments discontinued, when—Protective payments. Upon notification by the employment security department to the department of public assistance that there has been a final determination that a person referred under this work incentive program has refused without good cause to accept employment or to participate in training or participate in a special work project, the department of public assistance, in accordance with the federal social security act, as amended, shall discontinue the assistance payment to such person or, if counseling is accepted, may continue such assistance payments for a period of not more than sixty days: *Provided, however,* That protective payments contemplated by and authorized under the provisions of the federal social security act, as amended, shall be made in accordance therewith. [1969 c 15 § 12.]

74.23.120 Departmental authorization—Transfer of funds between departments—Rules and regulations. The employment security department and the department of public assistance are authorized to do all things necessary to effectuate the work incentive program on the state level in accordance with federal requirements contained in the federal social security act, as amended, and to that extent are authorized to transfer funds between the two departments and to adopt rules and regulations necessary to carry out the purpose and provisions of this chapter. [1969 c 15 § 13.]

74.23.900 Severability—Conflict with federal requirements. If any part of this chapter shall be found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of

such conflict and with respect to the agency directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter and its application to the agencies concerned. [1969 c 15 § 14.]

Chapter 74.32 ADVISORY COMMITTEES

Sections

- 74.32.100 Advisory committee on vendor rates—Created—Members—Chairman.
- 74.32.110 Advisory committee on vendor rates—"Vendor rates" defined.
- 74.32.120 Advisory committee on vendor rates—Meetings.
- 74.32.130 Advisory committee on vendor rates—Powers and duties.
- 74.32.140 Investigation to determine if additional requirements or standards affecting vendor group.
- 74.32.150 Investigation to determine if additional requirements or standards affecting vendor group—Scope of investigation.
- 74.32.160 Investigation to determine if additional requirements or standards affecting vendor group—Changes investigated regardless of source.
- 74.32.170 Investigation to determine if additional requirements or standards affecting vendor group—Prevailing wage scales and fringe benefit programs to be considered.
- 74.32.180 Investigation to determine if additional requirements or standards affecting vendor group—Additional factors to be accounted for.

74.32.100 Advisory committee on vendor rates—Created—Members—Chairman. There is hereby created a governor's advisory committee on vendor rates. The committee shall be composed of nine members appointed by the governor. In addition, the secretary of the department of social and health services or his designee shall be an ex officio member of the committee. Members shall be selected on the basis of their interest in problems related to the department of social and health services, and no less than two members shall be licensed certified public accountants. The members shall serve at the pleasure of the governor. The governor shall select one member to serve as chairman of the committee and he shall serve as such at the pleasure of the governor. [1971 ex.s. c 87 § 1; 1969 ex.s. c 203 § 1.]

74.32.110 Advisory committee on vendor rates—"Vendor rates" defined. The term "vendor rates" as used throughout RCW 74.32.100 through 74.32.130 shall include, but not be limited to, the cost reimbursement basis upon which all participating hospital organizations receive compensation. [1969 ex.s. c 203 § 2.]

74.32.120 Advisory committee on vendor rates—Meetings. The committee shall meet at least a total of three and no more than twelve times per year at such specific times and places as may be determined by the chairman. Members shall be entitled to reimbursement for his subsistence and lodging expenses as provided in RCW 43.03.050, as now or hereafter amended, and for his travel expenses as provided for in RCW 43.03.060, as now or hereafter amended. [1969 ex.s. c 203 § 3.]

74.32.130 Advisory committee on vendor rates—Powers and duties. The committee shall have the following powers and duties:

(1) Study and review the methods and procedures for establishing the rates and/or fees of all vendors of goods, services and care purchased by the department of social and health services including all medical and welfare care and services.

(2) Provide each professional and trade association or other representative groups of each of the service areas, the opportunity to present to the committee their evidence for justifying the methods of computing and the justification for the rates and/or fees they propose.

(3) The committee shall have the authority to request vendors to appoint a fiscal intermediary to provide the committee with an evaluation and justification of the method of establishing rates and/or fees.

(4) Prepare and submit a written report to the governor, at least sixty days prior to each session of the legislature, which contains its findings and recommendations concerning the methods and procedures for establishing rates and/or fees and the specific rates and/or fees that should be paid by the department of social and health services to the various designated vendors. This report shall include the suggested effective dates of the recommended rates and/or fees when appropriate.

The vendors shall furnish adequate documented evidence related to the cost of providing their particular services, care or supplies, in the form, to the extent and at such times as the committee may determine.

The chairman of this committee, shall have the same authority as provided in RCW 74.04.290 as it is now or hereafter amended. [1971 ex.s. c 87 § 2; 1969 ex.s. c 203 § 4.]

74.32.140 Investigation to determine if additional requirements or standards affecting vendor group. Before completing its recommendations regarding rates, the governor's committee on vendor rates shall conduct an extensive investigation to determine the nature and extent of any additional requirements or standards established which affect any vendor group if the same have not been fully considered and provided for in the committee's last recommendations, and shall similarly determine the nature and effect of any additional requirements or standards which are expected to be imposed during the period covered by the committee's recommendations. [1971 ex.s. c 298 § 1.]

74.32.150 Investigation to determine if additional requirements or standards affecting vendor group—Scope of investigation. The additional requirements and standards referred to in RCW 74.32.140 shall include but shall not be limited to changes in minimum wage or overtime provisions, changes in building code or facility requirements for occupancy or licensing, and changes in requirements for staffing, available equipment, or methods and procedures. [1971 ex.s. c 298 § 2.]

74.32.160 Investigation to determine if additional requirements or standards affecting vendor group—Changes investigated regardless of source. The committee shall investigate such changes whether their source is or may be federal, state, or local governmental agencies, departments and officers, and shall give full consideration to the cost of such changes and expected changes in the vendor rates recommended. [1971 ex.s. c 298 § 3.]

74.32.170 Investigation to determine if additional requirements or standards affecting vendor group—Prevailing wage scales and fringe benefit programs to be considered. The committee shall also consider prevailing wage scales and fringe benefit programs affecting the vendor's industry or affecting related or associated industries or vendor classes, and shall consider in its rate recommendations a scale of competitive wages, to assure the availability of necessary personnel in each vendor program. [1971 ex.s. c 298 § 4.]

74.32.180 Investigation to determine if additional requirements or standards affecting vendor group—Additional factors to be accounted for. The committee shall further fully account in its recommended rate structure for the effect of changes in payroll and property taxes[,] accurate costs of insurance, and increased or lowered costs of borrowing money. [1971 ex.s. c 298 § 5.]

Chapter 74.36

WASHINGTON STATE COUNCIL ON AGING

Sections

- 74.36.100 Department to participate in and administer Federal Older Americans Act of 1965.
 74.36.110 Community programs and projects for the aging—Allotments for—Purpose.
 74.36.120 Community programs and projects for the aging—Standards for eligibility and approval—Informal hearing on denial of approval.
 74.36.130 Community programs and projects for the aging—State funding, limitations—Payments, type.

74.36.100 Department to participate in and administer Federal Older Americans Act of 1965. The department of social and health services is authorized to take advantage of and participate in the Federal Older Americans Act of 1965 (Public Law 89-73, 89th Congress, 79 Stat. 220) and to accept, administer and disburse any federal funds that may be available under said act. [1970 ex.s. c 18 § 27; 1967 ex.s. c 33 § 1.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

Departmental advisory committees: RCW 74.32.100–74.32.180.

74.36.110 Community programs and projects for the aging—Allotments for—Purpose. The secretary of the department of social and health services or his designee is authorized to allot for such purposes all or a portion of whatever state funds the legislature appropriates or are otherwise made available for the purpose of matching local funds dedicated to community programs and projects for the aging. The purpose of RCW 74.36.110 through 74.36.130 is to stimulate and assist

local communities to obtain federal funds made available under the Federal Older Americans Act of 1965 as amended. [1971 ex.s. c 169 § 10.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

74.36.120 Community programs and projects for the aging—Standards for eligibility and approval—Informal hearing on denial of approval. (1) The secretary or his designee shall adopt and set forth standards for determining the eligibility and approval of community projects and priorities therefor, and shall have final authority to approve or deny such projects and funding requested under RCW 74.36.110 through 74.36.130.

(2) Only community project proposals submitted by local public agencies, by private nonprofit agencies or organizations, or by public or other nonprofit institutions of higher education, shall be eligible for approval.

(3) Any community project applicant whose application for approval is denied will be afforded an opportunity for an informal hearing before the secretary or his designee, but the administrative procedure act, chapter 34.04 RCW, shall not apply. [1971 ex.s. c 169 § 11.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

74.36.130 Community programs and projects for the aging—State funding, limitations—Payments, type.

(1) State funds made available under RCW 74.36.110 through 74.36.130 for any project shall not exceed fifty per centum of the nonfederal share of the costs. To the extent that federal law permits, and the secretary or his designee deems appropriate, the local community share and/or the state share may be in the form of cash or in-kind resources.

(2) Payments made under RCW 74.36.110 through 74.36.130 may be made in advance or by way of reimbursement, and in such installments and on such conditions as the secretary or his designee may determine, including provisions for adequate accounting systems, reasonable record retention periods and financial audits. [1971 ex.s. c 169 § 12.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

Chapter 74.98 CONSTRUCTION

Sections

- 74.98.010 Continuation of existing law.
 74.98.020 Title, chapter, section headings not part of law.
 74.98.030 Invalidity of part of title not to affect remainder.
 74.98.040 Purpose—1959 c 26.
 74.98.050 Repeals and saving.
 74.98.060 Emergency—1959 c 26.

74.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1959 c 26 § 74.98.010.]

74.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1959 c 26 § 74.98.020.]

74.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, the application of the provision to other persons or circumstances is not affected. [1959 c 26 § 74.98.030.]

74.98.040 Purpose—1959 c 26. It is the purpose and intent of this title to provide for the public welfare by making available, in conjunction with federal matching funds, such public assistance as is necessary to insure to recipients thereof a reasonable subsistence compatible with decency and health. [1959 c 26 § 74.98.040.]

74.98.050 Repeals and saving. The following acts or parts of acts are repealed:

(1) Sections 1 through 11, pages 395 through 397, Laws of 1854;

(2) Section 19, page 422, Laws of 1854;

(3) Sections 2680 and 2696 through 2706, Code of 1881;

(4) Chapter 135, Laws of 1915;

(5) Chapter 72, Laws of 1921;

(6) Chapter 8, Laws of 1933;

(7) Chapter 29, Laws of 1933;

(8) Chapter 65, Laws of 1933;

(9) Chapter 102, Laws of 1933;

(10) Sections 2 through 7, chapter 172, Laws of 1933;

(11) Chapter 77, Laws of 1935;

(12) Chapter 106, Laws of 1935;

(13) Chapter 110, Laws of 1935;

(14) Chapter 118, Laws of 1935;

(15) Sections 1 through 29, and 31, chapter 182, Laws of 1935;

(16) Chapter 111, Laws of 1937;

(17) Chapter 114, Laws of 1937;

(18) Chapter 132, Laws of 1937;

(19) Chapter 156, Laws of 1937;

(20) Chapter 180, Laws of 1937;

(21) Chapter 25, Laws of 1939;

(22) Chapter 75, Laws of 1939;

(23) Chapter 216, Laws of 1939;

(24) Chapter 1, Laws of 1941;

(25) Chapter 128, Laws of 1941;

(26) Chapter 170, Laws of 1941;

(27) Chapter 242, Laws of 1941;

(28) Chapter 159, Laws of 1943;

(29) Chapter 172, Laws of 1943;

(30) Chapter 7, Laws of 1945;

(31) Chapter 80, Laws of 1945

(32) Chapter 260, Laws of 1947;

(33) Chapter 288, Laws of 1947;

(34) Chapter 289, Laws of 1947;

(35) Chapter 6, Laws of 1949;

(36) Chapter 166, Laws of 1949;

(37) Chapter 10, Laws of 1950, extraordinary session;

(38) Chapter 1, Laws of 1951;

(39) Chapter 122, Laws of 1951;

(40) Chapter 165, Laws of 1951;

(41) Chapter 176, Laws of 1951;

(42) Chapter 261, Laws of 1951;

(43) Sections 2 through 16, and 18, chapter 270, Laws of 1951;

(44) Chapter 274, Laws of 1951;

(45) Chapter 5, Laws of 1951, 1st extraordinary session;

(46) Chapter 17, Laws of 1951, 2nd extraordinary session;

(47) Chapter 21, Laws of 1951, 2nd extraordinary session;

(48) Sections 3 through 51, chapter 174, Laws of 1953;

(49) Chapter 3, Laws of 1953 1st extraordinary session;

(50) Chapter 5, Laws of 1953 1st extraordinary session;

(51) Chapter 273, Laws of 1955;

(52) Chapter 366, Laws of 1955;

(53) Chapter 379, Laws of 1955;

(54) Chapter 380, Laws of 1955;

(55) Sections 2 through 4, chapter 187, Laws of 1957;

(56) Chapter 63, Laws of 1957.

Such repeals shall not be construed as affecting any existing right acquired under the provisions of the statutes repealed, nor as affecting any proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder, nor any administrative action taken thereunder, nor the term of office or appointment or employment of any person appointed or employed thereunder. [1959 c 26 § 74.98.050.]

74.98.060 Emergency—1959 c 26. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1959 c 26 § 74.98.060.]

TITLE 75

FOOD FISH AND SHELLFISH

Chapters

- 75.04 Definitions.
- 75.08 Administration and enforcement.
- 75.12 Taking of food fish, shellfish.
- 75.16 Conservation and propagation.
- 75.18 Preservation of salmon resources.
- 75.20 Restrictions as to dams, ditches, and other uses of waters and waterways.
- 75.24 Shellfish.
- 75.28 Licenses.
- 75.32 Privilege and catch fees on food fish and shellfish.
- 75.36 Seizure and forfeiture of property for violations.
- 75.40 Compacts.
- 75.98 Construction.

Halibut—Misbranding by failure to show proper name: RCW 69.04.315.

Hood Canal bridge, public sport fishing from: RCW 47.56.366.

Interagency committee for outdoor recreation, director member of: RCW 43.99.110.

Material removed for channel or harbor improvement, or flood control—Use for public purpose: RCW 79.01.178.

Measurement of fish and fish products, fraud, penalty: RCW 9.45.122–9.45.126.

Thermal power plant site evaluation council, director a member: RCW 80.50.030.

Youth development and conservation committee, department's representative as member: RCW 43.51.520.

Chapter 75.04 DEFINITIONS

Sections

- 75.04.010 Scope of definitions.
- 75.04.020 "Director"——"Department"——"Person".
- 75.04.030 "Fish"——"Fishing".
- 75.04.040 "Food fish"——"Shellfish".
- 75.04.050 "Waters of the state".
- 75.04.060 "Offshore waters".
- 75.04.070 "Personal use".
- 75.04.080 "Commercial purposes".
- 75.04.090 "Resident".
- 75.04.100 "Angling".
- 75.04.110 "Salmon".

75.04.010 Scope of definitions. Terms used in this title or in any rule or regulation of the director of fisheries shall have the meaning given to them in this chapter. [1955 c 12 § 75.04.010. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780–100, part.]

Appointment, qualifications, powers, etc., of director of fisheries: Chapter 75.08 RCW.

Control of traffic along ocean beach highways for conservation of natural resources: RCW 43.51.680.

Tidelands reserved for recreational use and taking of fish and shellfish: RCW 79.16.175, 79.16.176.

75.04.020 "Director"——"Department"——"Person". "Director" means the director of fisheries.

"Department" means the department of fisheries.

"Person" includes any individual, any corporation, any government agency, or any group of two or more individuals acting together to forward a common purpose. [1955 c 12 § 75.04.020. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780–100, part.]

75.04.030 "Fish"——"Fishing". "Fish" and its derivatives, "fishing," "fished," etc., includes any means or effort made directly or indirectly to kill, injure, disturb, capture, or catch any of the various species of food fish and shellfish. [1955 c 12 § 75.04.030. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780–100, part.]

75.04.040 "Food fish"——"Shellfish". "Food fish" and "shellfish" shall be construed to include any and all species of marine and fresh water life classified as such by statute or by the director. [1955 c 12 § 75.04.040. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780–100, part.]

75.04.050 "Waters of the state". "Waters of the state" includes all waters within the territorial limits of the state. [1955 c 12 § 75.04.050. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780–100, part.]

75.04.060 "Offshore waters". "Offshore waters" includes the waters of the Pacific Ocean and the straits, bays, inlets, coves, and estuaries thereof outside the territorial limits of the state. [1955 c 12 § 75.04.060. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780–100, part.]

75.04.070 "Personal use". "Personal use"——The taking or possession of food fish or shellfish "for personal use" means taking or fishing for food fish and shellfish by angling or by such other means and with such gear as the director may authorize for fishing for personal use, or possessing the same for the use of the person fishing for, taking, or possessing the same and not for sale or barter. [1955 c 12 § 75.04.070. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780–100, part.]

75.04.080 "Commercial purposes". "Commercial purposes"—The taking, fishing for, possession, processing, or otherwise dealing in or disposing of food fish and shellfish for "commercial purposes" means taking or fishing for food fish with any gear unlawful for fishing for personal use, or taking or possessing the food fish and shellfish in excess of the limits permitted for personal use, or taking, fishing for, handling, processing, or otherwise disposing of or dealing in food fish with the intent of disposing of such food fish, shellfish, or parts thereof for profit, or by sale, barter, trade, or in commercial channels. [1955 c 12 § 75.04.080. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780-100, part.]

75.04.090 "Resident". A "resident" means a person who for the preceding one hundred and eighty days has maintained a permanent place of abode within the state with the intent to permanently reside within the state. [1955 c 12 § 75.04.090. Prior: 1951 c 271 § 1; 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780-100, part.]

75.04.100 "Angling". "Angling" means fishing for personal use with one line attached to a pole held in hand while landing the fish, or with a hand operated line without rod or reel, to which may be attached not to exceed two single hooks, or one artificial bait with no more than four multiple hooks. [1955 c 12 § 75.04.100. Prior: 1949 c 112 § 1, part; Rem. Supp. § 5780-100, part.]

75.04.110 "Salmon". "Salmon" includes the sockeye, silver, chinook, chum, humpback salmon and the so called salmon trout, and each and every species of the genus *oncorhynchus*, commonly known as salmon. [1955 c 12 § 75.04.110. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780-100, part.]

Chapter 75.08

ADMINISTRATION AND ENFORCEMENT

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75.08.230	Disposition of moneys collected—Sale of food fish or shellfish taken in test fishing.
75.08.240	Payment of appropriations and claims—Remittances and statements by director.
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75.08.270	Justice and superior courts have concurrent jurisdiction.
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Agricultural pesticide advisory board, departmental representation: RCW 17.21.230.

Classification as food fish by director of fisheries estops classification as game fish: RCW 77.08.020.

Ecological commission, departmental representation at meetings of: RCW 43.21A.170.

Fisheries laboratory, appropriation: RCW 79.24.320.

Prohibition as to commercial salmon fishing: RCW 75.12.650.

75.08.010 Fisheries code. This title shall be known and may be cited as the "fisheries code of the state of Washington." [1955 c 12 § 75.08.010. Prior: 1949 c 112 § 2; Rem. Supp. 1949 § 5780-200.]

75.08.012 Duties of the department. It shall be the duty and purpose of the department of fisheries to preserve, protect, perpetuate and manage the food fish and shellfish in the waters of the state and the offshore waters thereof to the end that such food fish and shellfish shall not be taken, possessed, sold or disposed of at such times and in such manner as will impair the supply thereof. [1949 c 112 § 3, part; Rem. Supp. 1949 § 5780-201, part. Formerly RCW 43.25.020. Redesignated as RCW 75.08.012 and added to chapter 12, Laws of 1955 and Title 75 RCW by 1965 c 8 § 43.25.020.]

75.08.014 Authority of director—Qualifications. The director of fisheries shall have charge and general supervision of the department of fisheries, and shall exercise all the powers and perform all the duties prescribed by law with respect to food fish and shellfish.

No person shall be eligible to appointment as, or to hold the office of, director of fisheries, unless he has general knowledge of commercial fishing conditions and of the fishing industry in this state, and has no financial interest in the fishing industry or any industry directly connected therewith. [1953 c 207 § 10. Prior: (i) 1933 c 3 § 5; 1921 c 7 § 116; RRS § 10874. (ii) 1949 c 112 § 3,

part; Rem. Supp. 1949 § 5780-201, part. (iii) 1949 c 112 § 5; Rem. Supp. 1949 § 5780-204. Formerly RCW 43.25.010. Redesignated as RCW 75.08.014 and added to chapter 12, Laws of 1955 and Title 75 RCW by 1965 c 8 § 43.25.010.]

75.08.020 General duties of director—Patrol vehicles and crafts—Reports and recommendations. The director shall devote his time to the duties of his office and enforce the laws and regulations of the director relating to propagation, protection, conservation, preservation, and management of food fish and shellfish.

The director shall purchase, construct, charter, and operate vehicles, boats, and aircraft necessary to properly patrol the shores and waters of the state and the offshore waters in the enforcement of this title and the regulations of the director.

The director shall make an annual report on or before the first day of June of each year to the governor, containing a detailed statement of his official actions, of the operation and result of the laws pertaining to the fish and shellfish industry, the method of taking fish and shellfish, the number of fish and shellfish propagated, and full and complete statistics of the fishing business, and suggestions as to needed legislation whenever he deems it necessary. [1955 c 12 § 75.08.020. Prior: 1949 c 112 § 7(3), (6), (7); Rem. Supp. 1949 § 5780-206 (3), (6), (7).]

75.08.021 May administer oaths. The director, or those authorized by him, may administer oaths in any matter connected with the duties of his office, and may require any report, statement or application made or submitted to the department to be made under oath. [1949 c 112 § 9; Rem. Supp. 1949 § 5780-208. Formerly RCW 43.25.060. Redesignated as RCW 75.08.021 and added to chapter 12, Laws of 1955 and Title 75 RCW by 1965 c 8 § 43.25.060.]

75.08.022 Director may employ assistants—Merit basis. The director shall have power to appoint, employ or deputize superintendents, inspectors, engineers, patrolmen and such clerical, technical, scientific and other assistants as may be necessary to carry on the work of the department. Such personnel, except the confidential secretary of the director, shall be employed on a basis of merit and in accordance with the rules and regulations of the state personnel board as established in RCW 41.06.030. [1949 c 112 § 4; Rem. Supp. 1949 § 5780-203. Formerly RCW 43.25.030. Redesignated as RCW 75.08.022 and added to chapter 12, Laws of 1955 and Title 75 RCW by 1965 c 8 § 43.25.030.]

75.08.023 Employees may be bonded. Each employee of the department if required by the director, shall give a bond to the state with a surety company authorized to do business in this state as surety in the sum of two thousand dollars conditioned for the faithful performance of his duties, the cost of bond to be paid by the state. [1949 c 112 § 11; Rem. Supp. 1949 § 5780-210.

Formerly RCW 43.25.040. Redesignated as RCW 75.08.023 and added to chapter 12, Laws of 1955 and Title 75 RCW by 1965 c 8 § 43.25.040.]

75.08.024 Fisheries patrol officers—Relieved from active duty when injured—Compensation. The director shall, and he is hereby authorized to, relieve from active duty fisheries patrol officers who, while in the performance of their official duties, have been injured or may hereafter be injured to such an extent as to be incapable of active service. Such employees shall receive one-half of their compensation at the existing wage, during the time such disability continues in effect, less any compensation received through the provisions of RCW 41.40.200, RCW 41.40.220 and RCW 75.08.206. [1957 c 216 § 1. Redesignated as RCW 75.08.024 and added to chapter 12, Laws of 1955 and Title 75 RCW by 1965 c 8 § 43.25.048.]

75.08.025 Agreements with department of defense—Regulation, patrol of defense areas. The authority of the director under the provisions of this title shall extend to negotiating agreements with the department of defense of the United States, or representatives thereof, for the purpose of coordinating and correlating the control of fishing in the waters of the state over which the department of defense, for national defense purposes, has assumed control, to the end that such waters may be utilized for fishing consistent with the safety of fishermen, personnel of the department of defense, and the public; to promulgate and enforce regulations for restricted fishing in said areas and to provide for such patrol of said areas as may be necessary. [1955 c 12 § 75.08.025. Prior: 1953 c 207 § 11.]

75.08.027 Cooperation with Oregon for protection, propagation of aquatic products. In addition and supplemental to any other powers and duties as provided by law, the director of fisheries of the state of Washington is hereby authorized to cooperate with the fish and game commissions of the state of Oregon in the promulgation of rules and regulations to assure an annual yield of aquatic products on the Columbia river and to prevent the taking of these products at such places or at such times as might actually endanger the brood stock of such aquatic products. [1959 c 315 § 1.]

75.08.030 Installations and facilities—Establishment, maintenance. The director shall establish and maintain state fish hatcheries, rearing stations, cultural stations, eyeing stations, brood ponds, trap sites, buildings, dock and harbor facilities, food fish and shellfish sanctuaries, rights of way, and such other installations and facilities as in his judgment may be necessary for the exercise of the powers and discharge of the duties of the director and the department. [1955 c 12 § 75.08.030. Prior: 1949 c 112 § 7(1); Rem. Supp. 1949 § 5780-206(1).]

75.08.040 Lands, water rights, rights of way—Acquisition, use, and management. The director shall select and acquire by gift, easement, purchase, lease, or condemnation brought in the name of the state, and by any other lawful means at his disposal, such lands, water rights, and rights of way, and construct all necessary facilities thereon, as may be necessary for the exercise of the powers and discharge of the duties of the department.

The director shall have authority to sell, lease, convey, or grant concessions upon, any property, real or personal, heretofore or hereafter acquired for the state and under the control of the department. [1955 c 212 § 1; 1955 c 12 § 75.08.040. Prior: 1949 c 112 § 7(2); Rem. Supp. 1949 § 5780–206(2).]

Tidelands reserved for recreational use and taking of fish and shellfish: RCW 79.16.175, 79.16.176.

75.08.050 Oyster reserve—Conservation and development. The director shall examine all oyster reserves and do or cause to be done such things as may be deemed advisable to conserve, protect, and develop such reserves. [1955 c 12 § 75.08.050. Prior: 1949 c 112 § 7(4); Rem. Supp. 1949 § 5780–206(4).]

75.08.054 Oyster seed—Importation and inspection. The director shall have the power to promulgate regulations governing the importation of oyster seed for the purpose of planting in the waters of this state, and he shall have the duty and authority to require them to be inspected for disease, infestations and pests at such places and in such manner and at such times as he shall deem advisable in order to insure that the oysters in the waters of this state shall not be endangered by the importations of diseased or infested oysters or pests which prey on oysters, and it shall be unlawful for any person to import oysters in this state for the purpose of planting the same in the waters of this state or to plant oyster seed in the waters of this state without first having obtained the authority from the director to do so. The director shall give such authority only after an adequate inspection under his direction has been made and the seed in question has been found to be free of disease, infestation, pests and other substances which might endanger the oysters in the waters of this state. [1955 c 12 § 75.08.054. Prior: 1951 c 271 § 42.]

75.08.056 Oyster seed—Costs of inspection. Persons importing oyster seed under the provisions of RCW 75.08.054 shall pay for the actual costs of inspecting the same, excluding the inspector's base salary. The cost shall be determined by the director of fisheries and shall be prorated among the importers according to the number of cases of oyster seeds each imports. The director of fisheries shall have the authority and it shall be his duty to specify the time and manner of payment. [1967 ex.s. c 38 § 1; 1955 c 12 § 75.08.056. Prior: 1951 c 271 § 43.]

Destruction of oyster bed, stake or buoy: RCW 9.61.040.

Interference with oysters or shellfish: RCW 9.61.040.

75.08.060 State shellfish and shrimp lands. The director shall examine the clam, mussel and oyster beds located on lands belonging to the state, and with the approval of the state commissioner of public lands, withdraw such lands from sale and lease and make reserves or public beaches thereof. He shall take such steps as are advisable for the conservation, protection, and development of such reserves. He shall do whatever may be necessary for the protection and development of the oyster, shrimp, clam, and mussel beds on state lands or lands under the jurisdiction of the state. [1955 c 12 § 75.08.060. Prior: 1949 c 112 § 7(5); Rem. Supp. 1949 § 5780–206(5).]

75.08.070 Territorial authority of director—Regulations same as fisheries commissions. The authority of the director under the provisions of this title shall extend to all areas and waters within the territorial limits of the state and to the offshore waters; and the director is authorized under the provisions of this title to promulgate and publish regulations corresponding to the recommendations and regulations of the Pacific Marine Fisheries Commission, the International Fisheries Commission, and the International Pacific Salmon Fisheries Commission. [1955 c 12 § 75.08.070. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780–205, part.]

75.08.080 Rules and regulations—Scope. The director shall investigate the habits, supply and economic use of, and classify, the food fish and shellfish in the waters of the state and the offshore waters, and from time to time, make, adopt, amend, and promulgate rules and regulations as follows:

(1) Specifying the times when the taking of any or all the various classes of food fish and shellfish is lawful or prohibited.

(2) Specifying and defining the areas, places, and waters in which the taking and possession of the various classes of food fish and shellfish is lawful or prohibited.

(3) Specifying and defining the types and sizes of gear, appliances, or other means that may be lawfully used in taking the various classes of food fish and shellfish, and specifying the times, places, and manner in which it shall be lawful to possess or use the same.

(4) Regulating the possession, disposal, and sale of food fish and shellfish within the state, whether acquired within or without the state, and specifying the times when the possession, disposal, or sale of the various species of food fish or shellfish is prohibited.

(5) Regulating the prevention and suppression of all infectious, contagious, dangerous, and communicable diseases and pests affecting food fish and shellfish.

(6) The fixing of the size, sex, numbers, and amounts of the various classes of food fish and shellfish that may be taken, possessed, sold, or disposed of.

(7) Regulating the landing of the various classes of food fish and shellfish or parts thereof within the state.

(8) Regulating the destruction of predatory seals and sea lions and other predators destructive of food fish or shellfish, and specifying the proof of the destruction of the same that shall be required.

(9) Specifying the statistical and biological reports that shall be required from licensed or nonlicensed fishermen, dealers, boathouses, handlers, or processors of food fish and shellfish.

(10) Specifying which species of marine and freshwater life are food fish and shellfish.

(11) Classifying the species of food fish and shellfish or parts thereof that may be used for purposes other than human consumption.

(12) Promulgating such other rules and regulations as may be necessary to carry out the provisions of this title and the purposes and duties of the department.

Subdivisions (1), (2), (3), (4), (6), and (7), shall not apply to licensed oyster farms or oysters produced thereon. [1955 c 12 § 75.08.080. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780-205, part.]

75.08.090 Rules and regulations—Adoption, promulgation. All rules and regulations of the director, acting director or such person designated by the director, and all amendments to, or modifications or revocations of existing rules and regulations shall be made and adopted by the director and shall be promulgated in accordance with the provisions of chapter 34.04 RCW. [1973 c 93 § 1; 1955 c 12 § 75.08.090. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780-205, part.]

75.08.100 Rules and regulations—As evidence. Rules and regulations of the director shall be admitted as evidence in the courts of the state when accompanied by an affidavit from the director or assistant director certifying that the rule or regulation has been lawfully adopted, promulgated, and published, and the affidavit shall be prima facie evidence of proper adoption, promulgation, and publication of the rule or regulation. [1955 c 12 § 75.08.100. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780-205, part.]

75.08.110 Printing of laws, regulations—Approval required. No person shall print or cause to be printed a booklet or pamphlet of the fisheries laws or regulations of the director or portions thereof without the approval of the director. [1955 c 12 § 75.08.110. Prior: 1949 c 112 § 16; Rem. Supp. 1949 § 5780-215.]

75.08.120 Director may designate fishing areas. The director is authorized to designate the mouths and fishing limits of all rivers and streams, or other fishing areas by driving piling or by establishing monuments or by description of landmarks or section lines, and his designation shall be final. [1955 c 12 § 75.08.120. Prior: 1949 c 112 § 10; Rem. Supp. 1949 § 5780-209.]

75.08.130 Damaging of printed matter and signs prohibited. No person shall destroy, tear down, shoot at, deface, or erase any printed matter or signs placed or posted by or under the instructions of the director. [1955 c 12 § 75.08.130. Prior: 1949 c 112 § 15; Rem. Supp. 1949 § 5780-214.]

Destruction of oyster bed, stake or buoy: RCW 9.61.040.

Interference with oysters or shellfish: RCW 9.61.040.

75.08.140 Brands on fish, etc., from private hatcheries and Indian reservations. The director shall have authority to require that brands, tags, or other devices be placed upon or attached to all food fish and shellfish sold from private hatcheries or Indian reservations, and to designate such brands, tags, or devices, and the director shall be authorized to charge a fee for such tags. [1955 c 12 § 75.08.140. Prior: 1949 c 112 § 8; Rem. Supp. 1949 § 5780-207.]

75.08.150 Enforcement of laws and regulations—Ex officio deputies. Every fisheries inspector, deputy fisheries inspector, game protector, sheriff, constable, marshal, and police officer within his respective jurisdiction, shall enforce all laws and all rules and regulations adopted by the director for the protection of food fish and shellfish, and the police officers specified, and United States game wardens, any forest officer appointed by the United States government, state forest wardens and rangers, and each of them, by virtue of their election or appointment, are constituted ex officio deputy fisheries inspectors within their respective jurisdictions. [1955 c 12 § 75.08.150. Prior: 1949 c 112 § 22; Rem. Supp. 1949 § 5780-220.]

75.08.160 Right of entry—Aircraft operated by department. The director and his duly authorized and acting assistants, fisheries inspectors, deputy fisheries inspectors, and department employees may, in the course of their duties, enter upon any land or waters in this state and remain thereon with any necessary equipment while performing such duties, and such action by such persons shall not constitute trespass.

It shall be lawful for any aircraft operated by the department to land and take off from any of the beaches or waters of the state and it shall be unlawful for any person to interfere with the operation of such aircraft. [1955 c 12 § 75.08.160. Prior: 1949 c 112 § 13; Rem. Supp. 1949 § 5780-212.]

75.08.170 Inspection and searches without warrant—Seizure of unlawful fish, shellfish. The director and any fisheries inspector or deputy inspector shall have the power to inspect and search without warrant, any person, boat, fishing appliance, cannery, and any property used in catching, packing, curing, preparing, or storing of food fish or shellfish, or any vehicle, conveyance, container, receptacle, cold storage plant, warehouse, market, tavern, restaurant, club, hotel, or other place, except any private domicile used exclusively as such, or any quarters in any boat, building or other property used exclusively as a private domicile, where he has reason to believe that food fish or shellfish are kept for sale, barter, or other purpose, and which he has reason to believe contain evidence of violations of the fisheries code or of any rule, regulation, or order made by the director.

Any hindrance or interference with any such officer while engaged in making such search shall be prima facie evidence that the person interfering with or hindering such officer is guilty of a violation of this title.

Any of the officers above named may at any time seize and take possession of any food fish or shellfish which has been unlawfully caught, taken, or killed or which is unlawfully possessed in violation of the provisions of the fisheries code or of any order, rule, or regulation made by the director and the same shall be confiscated to the state. [1955 c 12 § 75.08.170. Prior: 1949 c 112 § 19; Rem. Supp. 1949 § 5780-218.]

75.08.180 Search warrants—When to be issued. Any court having jurisdiction, upon complaint showing probable cause for believing that any food fish or shellfish, or any parts thereof, caught, taken, killed, or had in possession or under control by any person, or shipped or transported contrary to law or rule or regulation of the director, are concealed or kept in any place, shall issue a search warrant and cause a search to be made in any such place for any food fish or shellfish or any parts thereof and may cause any place or container to be entered and searched. [1955 c 12 § 75.08.180. Prior: 1949 c 112 § 23; Rem. Supp. 1949 § 5780-221.]

75.08.190 Arrest without warrant—When authorized—Resisting officer. The director, and any fisheries inspector, or deputy fisheries inspector, shall have authority to arrest, without writ, order or process, any person in the act of violating any of the provisions of this title, or any of the rules, regulations, or orders made by the director, and they are hereby made peace officers. If any person knowingly or wilfully resists or opposes such officer in the discharge of his duties or aids and abets such resistance or opposition, he shall be guilty of a gross misdemeanor and shall be fined not less than two hundred and fifty dollars. [1955 c 12 § 75.08.190. Prior: 1949 c 112 § 20; Rem. Supp. 1949 § 5780-218a.]

75.08.200 Service, execution of warrants, processes—Assistance. The director, all fisheries inspectors, and all deputy fisheries inspectors may serve and execute all warrants and processes issued by the courts in enforcing the provisions of law and all rules and regulations of the director pertaining to food fish and shellfish.

For the purpose of enforcing any such law or rule or regulation, they may call to their aid any necessary equipment, boat, vehicle, or airplane, or any sheriff, deputy sheriff, game protector, constable, police officer, or citizen, and any such person shall render such aid. [1955 c 12 § 75.08.200. Prior: 1949 c 112 § 21; Rem. Supp. 1949 § 5780-219.]

75.08.203 Insurance against actions for false arrest. The director of fisheries, and all appointees and employees of the department of fisheries who have powers of arrest shall, at the direction of the director of fisheries, be insured against actions for false arrest arising from arrests made while in the act of carrying out their assigned duties. The premiums on all such policies issued are to be paid from funds appropriated to the department of fisheries. [1953 c 207 § 13. Formerly RCW

43.25.045. Redesignated as RCW 75.08.203 and added to chapter 12, Laws of 1955 and Title 75 RCW by 1965 c 8 § 43.25.045.]

75.08.206 Peace officer compensation insurance—Medical aid. The director of fisheries shall procure compensation insurance for all employees of the department of fisheries engaged as peace officers, insuring such employees against injury or death incurred in the course of their employment as such peace officers when such employment involves the performance of duties not covered under the workmen's compensation act of the state of Washington. The beneficiaries and the compensation and benefits under such insurance shall be the same as provided in chapter 51.32 RCW as amended by *this 1971 amendatory act, and said insurance also shall provide for medical aid and hospitalization to the extent and amount as provided in RCW 51.36.010 and 51.36.020 as now or hereafter amended. [1971 ex.s. c 289 § 73; 1953 c 207 § 14. Formerly RCW 43.25.047. Redesignated as RCW 75.08.206 and added to chapter 12, Laws of 1955 and Title 75 RCW by 1965 c 8 § 43.25.047.]

*Reviser's note: "this 1971 amendatory act", see notes following RCW 51.08.018.

75.08.210 Failure to make reports and returns. It shall be unlawful for any person engaged in the fishing industry or licensed under this title to fail to make any report or return required of him by the fisheries code or by the director. [1955 c 12 § 75.08.210. Prior: 1949 c 112 § 18; Rem. Supp. 1949 § 5780-217.]

75.08.220 False information and reports. Every person who intentionally gives false or misleading information to the department as to the time, area, or waters in which any food fish or shellfish were taken or who shall intentionally prepare and submit a false or misleading report to the department shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred and fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not more than one year or by both such fine and imprisonment. [1955 c 12 § 75.08.220. Prior: 1949 c 112 § 14; Rem. Supp. 1949 § 5780-213.]

75.08.230 Disposition of moneys collected—Sale of food fish or shellfish taken in test fishing. All license fees, taxes, fines, and moneys realized from the sale of property seized or confiscated under the provisions of this title, and all bail moneys forfeited under prosecutions instituted under the provisions of this title, and all moneys realized from the sale of any of the property, real or personal, heretofore or hereafter acquired for the state and under the control of the department, except such moneys as are realized from the sale of food fish or shellfish caught or taken during test fishing operations conducted by the department for the purpose of food fish or shellfish resource evaluation studies, all moneys collected for damages and injuries to any such property, and all moneys collected for rental or concessions from such property, shall be paid into the state

treasury general fund: *Provided*, That all such moneys as are realized from test fishing operations as aforesaid, shall be transmitted to the state treasurer who shall act as custodian, and the treasurer shall place such moneys in a special account known as receipts in excess of budget estimates, to be allotted by the governor, upon the request of the director of fisheries, for the purpose of defraying the costs of such test fishing: *Provided further*, That salmon taken in test fishing operations shall not be sold except during a season open to commercial fishing in the district that test fishing is being conducted: *Provided further*, That fifty percent of all money received as fines together with all of the costs shall be retained by the county in which the fine was collected.

All fines collected shall be remitted monthly by the justice of the peace or by the clerk of the court collecting the same to the county treasurer of the county in which the same shall be collected, and the county treasurer shall at least once a month remit fifty percent of the same to the state treasurer and at the same time shall furnish a statement to the director showing the amount of fines so remitted and from whom collected: *Provided*, That in instances wherein any portion of a fine assessed by a court is suspended, deferred, or otherwise not collected, the entire amount collected shall be remitted by the county treasurer to the state treasurer and shall be credited to the general fund: *Provided further*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

The proceeds of all sales of salmon by the director shall be handled in the same manner as the proceeds of the sales of food fish taken in test fishing conducted by the department. [1969 ex.s. c 199 § 31; 1969 ex.s. c 16 § 1; 1965 ex.s. c 72 § 2; 1955 c 12 § 75.08.230. Prior: 1949 c 112 § 26; Rem. Supp. 1949 § 5780-223.]

Sale of food fish or shellfish taken in test fishing operations—Restrictions as to salmon: RCW 75.12.130.

75.08.240 Payment of appropriations and claims—Remittances and statements by director. All appropriations for the department, and the fisheries division of the state treasurer and all claims against those departments, shall be paid from the general fund.

The director shall make weekly remittances to the state treasurer of all moneys collected by him from any source whatever, together with a statement showing from whence the moneys are derived. [1973 c 95 § 4; 1955 c 12 § 75.08.240. Prior: 1949 c 112 § 26; Rem. Supp. 1949 § 5780-224.]

75.08.250 Auditing of expenses—Preparing vouchers. All expenses incurred under the provisions of this title shall be audited by the state auditor, upon bills presented, properly certified by the director, or his duly authorized assistant and vouchers shall be prepared by the department and forwarded to the state treasurer for payment. [1973 c 106 § 34; 1955 c 12 § 75.08.250. Prior: 1949 c 112 § 27; Rem. Supp. 1949 § 5780-225.]

75.08.260 General penalty for violations. Unless otherwise provided for in the fisheries code any person who violates any of the provisions of the fisheries code, or any of the rules or regulations of the director made pursuant thereto, or who aids or abets or assists in the violation thereof, shall be guilty of a gross misdemeanor, and upon a conviction thereof shall be punished by imprisonment in the county jail of the county in which the offense is committed for not less than thirty days or more than one year, or by a fine of not less than twenty-five dollars or more than one thousand dollars, or by both such fine and imprisonment. [1955 c 12 § 75.08-.260. Prior: 1949 c 112 § 75; Rem. Supp. 1949 § 5780-601.]

75.08.270 Justice and superior courts have concurrent jurisdiction. Every justice of the peace shall have jurisdiction concurrent with the superior court of all misdemeanors and gross misdemeanors committed in violation of the fisheries code and of the rules, regulations, and orders made by the director in accordance with existing law and to impose any penalty or confiscation provided for such offenses. [1955 c 12 § 75.08-.270. Prior: 1949 c 112 § 78; Rem. Supp. 1949 § 5780-604.]

75.08.275 Duty of attorney general when prosecuting attorney defaults. If any person violates any of the provisions of the fisheries law or any regulation of the director, and the prosecuting attorney of the county wherein such violation occurs shall, after information has been given him by the director, fail within thirty days thereafter to file an information against such alleged violator, the attorney general, when requested by the director, may file an information in the superior court of such county in the place and stead of the prosecuting attorney and prosecute the case. [1949 c 112 § 24; Rem. Supp. 1949 § 5780-222. Formerly RCW 43.25.070. Redesignated as RCW 75.08.275 and added to chapter 12, Laws of 1955 and to Title 75 RCW by 1965 c 8 § 43.25.070.]

75.08.280 Venue as to violations occurring in offshore waters. Violations of the fisheries code or the regulations of the director occurring in the offshore waters may be prosecuted in the superior court or justice courts of any county bordering on the Pacific Ocean, or in any county in which the food fish or shellfish are landed. [1955 c 12 § 75.08.280. Prior: 1949 c 112 § 79; Rem. Supp. 1949 § 5780-605.]

75.08.290 Retaliatory license application provision. If pursuant to the laws of any other state or territory application for any license relating to food fish or shellfish, commercial or personal, is required by such state or territory to be made in person by the person seeking to be licensed, a like requirement shall be imposed upon any person from such other state or territory who makes application for any license under the provisions of this title. [1961 c 230 § 1.]

Chapter 75.12
TAKING OF FOOD FISH, SHELLFISH

Sections

- 75.12.010 Commercial fishing for salmon in certain waters unlawful—Odd years.
- 75.12.020 Taking or molesting fish at or near racks, dams.
- 75.12.030 Fishing in fishways, etc., prohibited.
- 75.12.040 Gill nets in Columbia River—Maximum length permitted.
- 75.12.050 Drag seines unlawful in Columbia River.
- 75.12.060 Fixed appliances for catching salmon unlawful.
- 75.12.070 Shooting, gaffing, etc., food or shellfish.
- 75.12.080 Discharge of explosives in water unlawful.
- 75.12.090 Taking caught fish or stealing gear—Penalty.
- 75.12.100 Purchase, etc., of food or shellfish taken unlawfully.
- 75.12.110 Taking, etc., food or shellfish not to be used for human consumption unlawful.
- 75.12.115 Taking or fishing for crawfish unlawful—Exceptions.
- 75.12.120 Waste of food or shellfish unlawful—Purchase for canning, etc.
- 75.12.130 Director authorized to take fish or shellfish—Sale—Restrictions as to salmon.
- 75.12.140 Reef net fishing areas—Created.
- 75.12.150 Reef net fishing areas—Distances between rows of reef net gear.
- 75.12.160 Reef net fishing areas—Commercial salmon fishing with reef nets unlawful elsewhere.
- 75.12.200 Conservation of salmon resources in Pacific Ocean—Preamble.
- 75.12.210 Conservation of salmon resources in Pacific Ocean—Net fishing for salmon in certain Pacific Ocean waters unlawful.
- 75.12.220 Conservation of salmon resources in Pacific Ocean—Net fishing within international waters of Pacific Ocean unlawful—Unlawful to use other than troll or angling gear if sister states concur.
- 75.12.230 Conservation of salmon resources in Pacific Ocean—Possession, transportation of salmon taken by net unlawful—Same, taken by other than troll or angling gear or on board vessel carrying unlawful gear—Exceptions.
- 75.12.232 Conservation of salmon resources in Pacific Ocean—Director may permit licensees to use gear similar to that used by foreign vessels.
- 75.12.240 Conservation of salmon resources in Pacific Ocean—"International waters" defined.
- 75.12.250 Conservation of salmon resources in Pacific Ocean—"Citizen of this state" defined.
- 75.12.260 Conservation of salmon resources in Pacific Ocean—When RCW 75.12.200 through 75.12.270 inoperative, when effective, how existence proved.
- 75.12.270 Conservation of salmon resources in Pacific Ocean—Construction of RCW 75.12.200 through 75.12.270.
- 75.12.280 Monofilament gill net webbing for catching salmon unlawful.
- 75.12.650 "Angling" or "personal use" gear prohibited for commercial salmon fishing.

Columbia river boundary compact: Chapter 43.58 RCW.

75.12.010 Commercial fishing for salmon in certain waters unlawful—Odd years. It shall be unlawful to fish for, catch, or take any species of salmon for commercial purposes, except as hereinafter provided, within the waters of the Straits of Juan de Fuca, Puget Sound and waters connected therewith within the state of Washington described as lying to the southerly, easterly and southeasterly of a line described as follows:

Commencing at a concrete monument on Angeles Point in Clallam county, state of Washington, near the mouth of the Elwha River on which is inscribed "Angeles Point Monument" in the latitude 48° 9'3" [north, longitude 123° 33'01" west of Greenwich Meridian;

thence running east on a line 81°] 30' true from said point across the flashlight and bell buoy off Partridge Point and thence continued to where said line intersects longitude 122° 40' west; thence north on said line to where said line intersects the southerly shore of Sinclair Island at high tide; thence along the southerly shore of said island to the most easterly point thereof; thence north 46° east true to the line of high tide at Carter Point, the most southerly point of Lummi Island; thence northwesterly along the westerly shore line at high tide of said Lummi Island to where said shore line at high tide intersects line of longitude 122° 40' west; thence north on said line to where said line intersects the mainland at the line of high tide; including within said area the southerly portion of Hale Passage, Bellingham Bay, Padilla Bay, Fidalgo Bay, Guemes Channel, Skagit Bay, Similk Bay, Saratoga Passage, Holmes Harbor, Possession Sound, Admiralty Inlet, Hood Canal, Puget Sound, and all inlets, passages, waters, waterways, and the tributaries thereof: *Provided*, That, subject to such seasons and regulations as may be established from time to time by the director, it shall be lawful to fish for commercial purposes within the above described waters with any lawful gear for sockeye salmon during the period extending from the tenth day of June to the twenty-fifth day of the following July and for other legal salmon from the second Monday of September to and including the thirtieth day of the following November, except during the hours beginning 4:00 o'clock p.m. of Friday and ending at 4:00 o'clock p.m. of the Sunday following: *And provided*, That it shall be lawful to fish for salmon for commercial purposes with gill net gear subject to such regulations and to such shorter seasons as the director may establish from time to time prior to the second Monday in September within the waters of Hale Passage, Bellingham Bay, Samish Bay, Padilla Bay, Fidalgo Bay, Guemes Channel, Skagit Bay, and Similk Bay, to wit: Those waters northerly and easterly of a line commencing at Stanwood, thence along the south shore of Skagit Bay to Rocky Point on Camano Island; thence northerly to Polnell Point on Whidbey Island.

And provided, That whenever the director determines that a stock or run of salmon cannot be feasibly and properly harvested in the usual manner, and that such stock or run of salmon may be in danger of being wasted and surplus to natural or artificial spawning requirements, the director may maneuver units of lawful gill net and purse seine gear in any number or equivalents at his discretion, by time and area, to fully utilize such harvestable portions of these salmon runs for the economic well being of the citizens of this state, except that gill net and purse seine gear other than emergency and test gear authorized by the fisheries department shall not be used in Lake Washington.

And provided, That subject to such regulations and to such shorter seasons as the director may establish from time to time, it shall be lawful to fish for pink salmon for commercial purposes with any lawful gear in each odd year during the period running from the first day of August to the first day of September, both dates

inclusive, in the waters lying inside of the following described line: A line commencing at a red wooden monument located on the most easterly point of Dungeness Spit and thence projected to a similar monument located at Point Partridge on Whidbey Island and a line commencing at a red wooden monument located on Olele Point and thence projected easterly to a similar monument located at Bush Point on Whidbey Island. [1973 1st ex.s. c 220 § 2; 1971 ex.s. c 283 § 13; 1955 c 12 § 75.12.010. Prior: 1949 c 112 § 28; Rem. Supp. 1949 § 5780-301]

Legislative declaration: "The preservation of the fishing industry and food fish and shellfish resources of the state of Washington is vital to the state's economy, and effective measures and remedies are necessary to prevent the depletion of these resources." [1973 1st ex.s. c 220 § 1]

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.12.020 Taking or molesting fish at or near racks, dams. It shall be unlawful to catch, kill, or in any manner menace, maim or destroy, any food fish at any rack, dam or other obstruction or in the waters and on the beaches within one mile below any rack, dam or other obstruction when the same are within the territorial limits of the state of Washington or in waters of the Columbia River over which this state has concurrent jurisdiction, unless otherwise specified in the orders of the director. [1955 c 12 § 75.12.020. Prior: 1949 c 112 § 37; Rem. Supp. 1949 § 5780-311]

75.12.030 Fishing in fishways, etc., prohibited. See RCW 75.20.070.

75.12.040 Gill nets in Columbia River—Maximum length permitted. It shall be unlawful to construct, install, use, operate, or maintain gill nets which shall exceed 250 fathoms in length in the waters of the Columbia River in this state for the purpose of catching salmon. [1955 c 12 § 75.12.040. Prior: 1949 c 112 § 29; Rem. Supp. 1949 § 5780-303]

75.12.050 Drag seines unlawful in Columbia River. It shall be unlawful to construct, install, use, operate, or maintain any drag seine in the waters of the Columbia River in the state for the purpose of taking salmon, and it shall be unlawful to take salmon with such gear. [1955 c 12 § 75.12.050. Prior: 1949 c 112 § 30; Rem. Supp. 1949 § 5780-304]

75.12.060 Fixed appliances for catching salmon unlawful. It shall be unlawful to construct, install, use, operate, or maintain within any waters of the state any pound net, round haul net, lampara net, fish trap, fish wheel, scow fish wheel, set net, weir, or any fixed appliance for the purpose of catching salmon, and it shall be unlawful to take salmon by any such means. [1955 c 12 § 75.12.060. Prior: 1951 c 271 § 3; 1949 c 112 § 31; Rem. Supp. 1949 § 5780-305]

75.12.070 Shooting, gaffing, etc., food or shellfish. Unless otherwise provided for in the regulations of the director, it shall be unlawful to shoot, gaff, snag, snare, spear, stone, or otherwise molest any food fish or shellfish in any of the waters of the state. [1955 c 12 § 75.12.070. Prior: 1949 c 112 § 38; Rem. Supp. 1949 § 5780-312]

75.12.080 Discharge of explosives in water unlawful. It shall be unlawful to use or discharge, in any of the waters of this state, any explosive substance of any kind, character or description except under permit of the director. Where explosives are discharged for the purpose of unlawfully taking or destroying food fish or shellfish the person so offending shall be fined not less than two hundred and fifty dollars. [1955 c 12 § 75.12.080. Prior: 1951 c 271 § 4; 1949 c 112 § 32; Rem. Supp. 1949 § 5780-306]

75.12.090 Taking caught fish or stealing gear—Penalty. It shall be unlawful to take from any building, vehicle, scow, live box, container, trap, seine, line or net, any caught or impounded fish or shellfish with the intent of depriving the rightful owner of such food fish or shellfish and it shall be unlawful to wilfully steal or otherwise molest any of the fishing or shellfishing gear operated under a license from the state. Any person violating this section shall be guilty of a gross misdemeanor and shall be subject to a fine of not less than two hundred and fifty dollars. [1955 c 12 § 75.12.090. Prior: 1949 c 112 § 33; Rem. Supp. 1949 § 5780-307]

75.12.100 Purchase, etc., of food or shellfish taken unlawfully. It shall be unlawful for any person to purchase, handle, deal in, sell, or have in his possession any food fish or shellfish which were taken from any of the waters of this state contrary to the provisions of the fisheries code or the regulations of the director. [1955 c 12 § 75.12.100. Prior: 1949 c 112 § 34; Rem. Supp. 1949 § 5780-308]

75.12.110 Taking, etc., food or shellfish not to be used for human consumption unlawful. It shall be unlawful to take or fish for or have in possession any food fish or shellfish of any kind, character, or description, or parts thereof, unless the same are to be used for human consumption or bait: *Provided*, That the director shall have the power from time to time to make, adopt, amend, and promulgate in the manner provided by law, rules and regulations permitting the taking, possession, sale, or use of any species of food fish or shellfish or parts thereof for uses other than human consumption and bait. [1955 c 12 § 75.12.110. Prior: 1949 c 112 § 35; Rem. Supp. 1949 § 5780-309]

75.12.115 Taking or fishing for crawfish unlawful—Exceptions. It shall be unlawful to take or fish for crawfish for commercial purposes in any of the rivers, streams or lakes of the state except under conditions where crawfish have been cultured for commercial purposes or where otherwise permitted under department of fisheries rules or regulation. [1971 ex.s. c 106 § 1.]

75.12.120 Waste of food or shellfish unlawful—Purchase for canning, etc. It shall be unlawful for any person to wantonly waste or destroy food fish or shellfish taken or caught in any of the waters of the state, or the offshore waters, and no person engaged in the canning, preserving, or curing of food fish and shellfish shall purchase or engage a greater quantity than he is able to can, preserve, or cure within sixty hours after the same are taken from the water, unless such food fish or shellfish have been kept artificially chilled and in good marketable condition. [1955 c 12 § 75.12.120. Prior: 1949 c 112 § 36; Rem. Supp. 1949 § 5780-310.]

75.12.130 Director authorized to take fish or shellfish—Sale—Restrictions as to salmon. The director may, for the purpose of carrying out his duties, take or remove or cause to be taken or removed in any manner, at any time, any fish or shellfish of any kind, character, or description from any waters or beaches of the state.

The director is authorized to sell food fish or shellfish caught or taken during test fishing operations conducted by the department for the purpose of food fish or shellfish resource evaluation studies.

The director is prohibited from selling spawned-out salmon carcasses or salmon in spawning condition for human consumption: *Provided*, That such salmon and carcasses may be given to state institutions or schools or to economically depressed people, unless such salmon are found to be unfit for human consumption by the department of health. That which is not fit for human consumption may be sold by the director for animal food, fish food, or for industrial purposes. [1969 ex.s. c 16 § 2; 1965 ex.s. c 72 § 1; 1955 c 12 § 75.12.130. Prior: 1949 c 112 § 41; Rem. Supp. 1949 § 5780-315.]

Disposition of moneys taken from sale of food fish or shellfish taken in test fishing, salmon: RCW 75.08.230.

75.12.140 Reef net fishing areas—Created. The following reef net fishing areas are hereby created: *Provided*, That nothing in this section and RCW 75.12.150 and 75.12.160 shall be interpreted as prohibiting other types of legal gear from fishing within the areas created:

(1) Point Roberts reef net fishing area includes those waters within 250 feet on each side of a line projected 129° true from a point at longitude 123° 01' 15" W. latitude 48° 58' 38" N. to a point one mile distant, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6300, published September, 1941, in Washington, D.C., eleventh edition.

(2) Cherry Point reef net fishing area includes those waters inland and inside the 10-fathom line between lines projected 205° true from points on the mainland at longitude 122° 44' 54" latitude 48° 51' 48" and longitude 122° 44' 18" latitude 48° 51' 33", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(3) Lummi Island reef net fishing area includes those waters inland and inside a line projected from Village Point 208° true to a point 900 yards distant, thence 129° true to the point of intersection with a line projected 259° true from the shore of Lummi Island 122°

40' 42" latitude 48° 41' 32", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition, revised 11-25-57, save and except that there shall be excluded therefrom all waters lying inside of a line projected 259° true from a point at 122° 40' 42" latitude 48° 41' 32" to a point 300 yards distant from high tide, thence in a northerly direction to the United States Coast and Geodetic Survey reference mark number 2, 1941-1950, located on that point on Lummi Island known as Lovers Point, as such descriptions are shown upon the United States Coast and Geodetic Survey map number 6380 as aforesaid. The term "Village Point" as used herein shall be construed to mean a point of location on Village Point, Lummi Island, at the mean high tide line on a true bearing of 43° 53' a distance of 457 feet to the center of the chimney of a wood frame house on the east side of the county road. Said chimney and house being described as Village Point Chimney on page 612 of the United States Coast and Geodetic Survey list of geographic positions No. G-5455, Rosario Strait.

(4) Sinclair Island reef net fishing area includes those waters inland and inside a line projected from the northern point of Sinclair Island to Boulder reef, thence 200° true to the northwesterly point of Sinclair Island, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(5) Flat Point reef net fishing area includes those waters within a radius of 175 feet of a point off Lopez Island located at longitude 122° 55' 24" latitude 48° 32' 33", as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(6) Lopez Island reef net fishing area includes those waters within 400 yards of shore between lines projected true west from points on the shore of Lopez Island at longitude 122° 55' 04" latitude 48° 31' 59" and longitude 122° 55' 54" latitude 48° 30' 55", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(7) Iceberg Point reef net fishing area includes those waters inland and inside a line projected from Davis Point on Lopez Island to the west point of Long Island, thence to the southern point of Hall Island, thence to the eastern point at the entrance to Jones Bay, and thence to the southern point at the entrance to Mackaye Harbor on Lopez Island; and those waters inland and inside a line projected 320° from Iceberg Point light on Lopez Island, a distance of 400 feet, thence easterly to the point on Lopez Island at longitude 122° 53' 00" latitude 48° 25' 39", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(8) Aleck Bay reef net fishing area includes those waters inland and inside a line projected from the southwestern point at the entrance to Aleck Bay on Lopez

Island at longitude 122° 51' 11" latitude 48° 25' 14" southeasterly 800 yards to the submerged rock shown on U.S.G.S. map number 6380, thence northerly to the cove on Lopez Island at longitude 122° 50' 49" latitude 48° 25' 42", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(9) Shaw Island reef net fishing area number 1 includes those waters within 300 yards of shore between lines projected true south from points on Shaw Island at longitude 122° 56' 14" latitude 48° 33' 28" and longitude 122° 57' 29" latitude 48° 32' 58", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(10) Shaw Island reef net fishing area number 2 includes those waters inland and inside a line projected from Point George on Shaw Island to the westerly point of Neck Point on Shaw Island, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(11) Stuart Island reef net fishing area number 1 includes those waters within 600 feet of the shore of Stuart Island between lines projected true east from points at longitude 123° 10' 47" latitude 48° 39' 47" and longitude 123° 10' 47" latitude 48° 39' 33", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(12) Stuart Island reef net fishing area number 2 includes those waters within 250 feet of Gossip Island, also known as Happy Island, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(13) Johns Island reef net fishing area includes those waters inland and inside a line projected from the eastern point of Johns Island to the northwestern point of Little Cactus Island, thence northwesterly to a point on Johns Island at longitude 123° 09' 24" latitude 48° 39' 59", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(14) Battleship Island reef net fishing area includes those waters lying within 350 feet of Battleship Island, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(15) Open Bay reef net fishing area includes those waters lying within 150 feet of shore between lines projected true east from a point on Henry Island at longitude 123° 11' 34 1/2" latitude 48° 35' 27 1/2" at a point 250 feet south, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(16) Mitchell Reef net fishing area includes those waters within a line beginning at the rock shown on

U.S.G.S. map number 6380 at longitude 123° 10' 56" latitude 48° 34' 49 1/2", and projected 50 feet northwesterly, thence southwesterly 250 feet, thence southeasterly 300 feet, thence northeasterly 250 feet, thence to the point of beginning, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(17) Smugglers Cove reef fishing area includes those waters within 200 feet of shore between lines projected true west from points on the shore of San Juan Island at longitude 123° 10' 29" latitude 48° 33' 50" and longitude 123° 10' 31" latitude 48° 33' 45", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(18) Andrews Bay reef net fishing area includes those waters lying within 300 feet of the shore of San Juan Island between a line projected true south from a point at the northern entrance of Andrews Bay at longitude 123° 09' 53 1/2" latitude 48° 33' 00" and the cable crossing sign in Andrews Bay, at longitude 123° 09' 45" latitude 48° 33' 04", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(19) Orcas Island reef net fishing area includes those waters inland and inside a line projected true west a distance of 1,000 yards from the shore of Orcas Island at longitude 122° 57' 40" latitude 48° 41' 06" thence northeasterly to a point 500 feet true west of Point Doughty, then true east to Point Doughty, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition. [1965 c 64 § 1; 1961 c 236 § 1; 1959 c 309 § 1; 1955 c 276 § 2.]

75.12.150 Reef net fishing areas—Distances between rows of reef net gear. The director may by appropriate regulations specify the distances to be maintained between rows of reef net gears. [1955 c 276 § 3.]

75.12.160 Reef net fishing areas—Commercial salmon fishing with reef nets unlawful elsewhere. It shall be unlawful to fish for salmon for commercial purpose with reef net fishing gear in any waters of the state of Washington except in those waters within the reef net areas described in this chapter. [1955 c 276 § 4.]

75.12.200 Conservation of salmon resources in Pacific Ocean—Preamble. The state has a vital interest in the salmon resources of the Pacific Ocean both within and beyond the territorial limits of the state, in that a large number of such salmon spawn in its fresh water streams, migrate to the waters of the Pacific Ocean and, in response to their anadromous cycle, return to the fresh water streams to spawn.

Expansion of fishing for salmon by the use of nets in waters of the eastern Pacific Ocean, which has occurred in the past year, will result in a substantial depletion of salmon originating within the state because the salmon

runs are intercepted before they separate to move in toward the rivers of their origin. Oregon, California and Canada, through their respective fisheries agencies, have likewise expressed a deep concern over this problem since portions of such salmon originate within their respective jurisdictions. Short of absolute prohibition, it appears to be presently impracticable to regulate salmon net fishing in such waters of the Pacific Ocean by any known scientific fisheries management techniques in order to insure adequate salmon escapement to the three Pacific Coast states and Canada, the reason being that salmon stocks and races are so commingled in such Pacific Ocean waters that they are indistinguishable as to origin until they enter the harbors, bays, straits and estuaries of the respective jurisdictions.

Canada, through its authorized officials, has proposed to prohibit its nationals from net fishing for salmon in Pacific Ocean waters provided the United States or the three Pacific Coast states apply such appropriate conservation measures to their respective citizens. Inasmuch as there is presently no congressional legislation prohibiting such fishing, and inasmuch as authorized officials of the state department of the United States have expressed a desire to have the states act in this area, the Pacific Marine Fisheries Commission has proposed and recommended appropriate legislation to the three Pacific Coast states to insure the survival of their valuable salmon resources. [1957 c 108 § 2.]

*Pacific Marine Fisheries Commission: RCW 75.40.030 (Article III).
Preservation of salmon resources: Chapter 75.18 RCW.*

75.12.210 Conservation of salmon resources in Pacific Ocean—Net fishing for salmon in certain Pacific Ocean waters unlawful. It shall be unlawful for any person to fish for or take, by the use of any type of net, any salmon within the waters of the Pacific Ocean, over which the state has jurisdiction, lying westerly of the following described line: Commencing at the point of intersection of the international boundary line in the Strait of Juan de Fuca and a line drawn between the lighthouse on Tatoosh Island in Clallam County, Washington, and Bonilla Point on Vancouver Island; thence southerly along a line projected therefrom to the lighthouse on Tatoosh Island; thence southerly along a line projected therefrom to the most westerly point of Cape Flattery; thence southerly along the state shoreline of the Pacific Ocean, crossing any river mouths at their most westerly points of land, to Point Brown at the entrance to Grays Harbor; thence southerly along a line projected therefrom to Point Chehalis Light on Point Chehalis; thence southerly from Point Chehalis along the state shoreline of the Pacific Ocean to Cape Shoalwater Light at the entrance to Willapa Bay; thence southerly along a line projected therefrom to Leadbetter Point; thence southerly along the state shoreline of the Pacific Ocean to the inshore end of the North jetty at the entrance to the Columbia River; thence southerly along a line projected therefrom to the knuckle of the South jetty at the entrance to said river. [1957 c 108 § 3.]

Restrictions on fishing in certain districts: Chapter 75.18 RCW.

75.12.220 Conservation of salmon resources in Pacific Ocean—Net fishing within international waters of Pacific Ocean unlawful—Unlawful to use other than troll or angling gear if sister states concur. It shall be unlawful for any citizen of this state to fish for or take, by the use of any type of net, any salmon within the international waters of the Pacific Ocean: *Provided*, That it shall be unlawful for any citizen of this state to fish for or take, by the use of gear other than troll gear or angling gear, any salmon within the international waters of the Pacific Ocean if California, Alaska, and Oregon pass laws or regulations prohibiting fishing by their respective citizens in the international waters of the Pacific Ocean with any gear other than troll gear or angling gear within one year from the *date of passage of this act. Such laws or regulations shall be considered to be in effect upon receipt by the secretary of state of this state a certificate from each of the respective secretaries of state of Oregon, California, and Alaska setting forth copies of such laws or regulations and the date of their enactment. In any prosecution under this section, proof of the existence of such laws or regulations shall be made by filing copies of such certificates, certified by the director to be true copies, with the court. In any such prosecution, if written demand for proof of the existence of such laws or regulations is not made by the defendant prior to commencement of trial, he shall be deemed to have waived his right to make such demand, and thereafter such laws or regulations shall be presumed to exist. [1963 c 234 § 1; 1957 c 108 § 4.]

***Reviser's note:** Chapter 234, Laws of 1963 was HB No. 404 which passed the house, March 13, 1963; passed the senate March 12, 1963; and was approved by the governor March 26, 1963. It did not carry an emergency clause.

75.12.230 Conservation of salmon resources in Pacific Ocean—Possession, transportation of salmon taken by net unlawful—Same, taken by other than troll or angling gear or on board vessel carrying unlawful gear—Exceptions. It shall be unlawful for any person to transport through the waters of the state wherein salmon net fishing is prohibited, or to have in his possession anywhere within the state, any salmon which were taken by any type of net within the international waters of the Pacific Ocean or within the territorial waters of this state or of another state, territory or country where such fishing is unlawful: It shall further be unlawful for any person, within the territorial waters of the Pacific Ocean where salmon net fishing is prohibited, to possess any salmon on board any vessel carrying a net of a type named in chapter 75.28 RCW, unless accompanied by a certificate issued under the authority of this state or of another state, territory, or country showing that such salmon have been lawfully taken therein: *Provided*, That it shall be unlawful for any person to transport through the waters of the state wherein salmon fishing by the use of any type of fishing gear other than troll lines or angling gear is prohibited, or to have in his possession anywhere within the state, any salmon which were taken by any type of fishing gear other than troll lines or angling gear within the international waters of the Pacific Ocean or within the

territorial waters of this state or of another state or country where such fishing is unlawful: It shall further be unlawful for any person, within the territorial waters of the Pacific Ocean where salmon fishing by any type of fishing gear other than troll lines or angling gear is prohibited, to possess any salmon on board any vessel carrying any fishing gear of a type other than troll lines or angling gear, unless accompanied by a certificate issued under authority of this state or of another state, territory, or country showing that such salmon have been lawfully taken therein if California, Alaska and Oregon pass laws or regulations similarly prohibiting possession and transportation within their respective states within one year from the *date of passage of this act. Such laws or regulations shall be considered to be in effect upon receipt by the secretary of state of this state a certificate from each of the respective secretaries of state of Oregon, California and Alaska setting forth copies of such laws or regulations and the date of their enactment. In any prosecution under this section, proof of the existence of such laws or regulations shall be made by filing copies of such certificates, certified by the director to be true copies, with the court. In any such prosecution, if written demand for proof of the existence of such laws or regulations is not made by the defendant prior to commencement of trial, he shall be deemed to have waived his right to make such demand, and thereafter such laws or regulations shall be presumed to exist. [1963 c 234 § 2; 1957 c 108 § 5.]

*Reviser's note: See note following RCW 75.12.220.

Possession, transportation of salmon through fishing district: Chapter 75.18 RCW.

75.12.232 Conservation of salmon resources in Pacific Ocean—Director may permit licensees to use gear similar to that used by foreign vessels. If upon investigation by the director of the department of fisheries it is found that vessels of foreign nations are fishing in the international waters of the Pacific Ocean contrary to the provisions of chapter 75.12 RCW, the director may by special permit authorize the citizens of this state who possess commercial salmon licenses to fish for, take and possess salmon with gear similar to that operated by the vessels of the foreign nations so fishing: *Provided*, That the director shall not issue any such permits if the vessels of foreign nations are fishing for salmon in international waters of the Pacific Ocean in conformity with treaty agreements with the United States. [1963 c 234 § 3.]

75.12.240 Conservation of salmon resources in Pacific Ocean—"International waters" defined. "International waters" means waters outside the territorial boundaries of any state, territory, or country. [1957 c 108 § 6.]

75.12.250 Conservation of salmon resources in Pacific Ocean—"Citizen of this state" defined. A "citizen of this state" means a person who maintains his usual place of abode within the state or who otherwise qualifies as a citizen of the state under the applicable laws of the state. [1957 c 108 § 7.]

75.12.260 Conservation of salmon resources in Pacific Ocean—When RCW 75.12.200 through 75.12.270 inoperative, when effective, how existence proved. RCW 75.12.200 through 75.12.270 shall become inoperative one year from March 18, 1957 unless laws or regulations are in effect in Canada, Oregon and California which, in substance or effect are similar either to RCW 75.12.210 or 75.12.220 or to one of the two provisions of RCW 75.12.230, exclusive of boundary line descriptions, or which otherwise effectuate the purposes of RCW 75.12.200 through 75.12.270. Such laws or regulations shall be considered to be in effect upon receipt by the secretary of state of this state of a certificate from each of the respective secretaries of state of Oregon and California, and, on behalf of Canada, from the Department of State of the United States setting forth copies of such laws or regulations and the date of their enactment. In any prosecution under RCW 75.12.200 through 75.12.270, proof of the existence of such laws or regulations may be made by filing copies of such certificates, certified by the director to be true copies, with the court. In any such prosecution, if written demand for proof of the existence of such laws or regulations is not made by the defendant prior to commencement of trial, he shall be deemed to have waived his right to make such demand, and thereafter such laws or regulations shall be presumed to exist. [1957 c 108 § 8.]

Complementary Laws: (1) **California;** Laws of California 1957, chapter 424 (A.B. No. 3081); Laws of California 1957, chapter 456 (A.B. No. 616).

(2) **Canada;** Privy Council Order 1957-466, Fisheries Act, British Columbia Fishing Regulations (Canada Gazette Part II, Volume 9).

(3) **Oregon;** Oregon Laws 1957, chapter 152 (H.B. No. 595).

Certificates of above laws were filed in office of Secretary of State of Washington on July 29, 1957.

75.12.270 Conservation of salmon resources in Pacific Ocean—Construction of RCW 75.12.200 through 75.12.270. Nothing in RCW 75.12.200 through 75.12.270 shall be construed to restrict or impair the authority of the director, consistent with and pursuant to the provisions of this title, to promulgate such regulations as he may deem necessary to administer RCW 75.12.200 through 75.12.270 and to effectuate its purposes, to administer and effectuate all other acts relating to food fish or shellfish, or to regulate or prohibit salmon net fishing in waters not covered under RCW 75.12.200 through 75.12.270; nor shall anything herein be construed to restrict or impair the authority of the director to authorize the use of nets for the taking of salmon in waters of the Pacific Ocean for purposes of scientific investigation, or to promulgate regulations he may deem necessary under the provisions of the Pacific Marine Fisheries Compact. [1957 c 108 § 9.]

Pacific Marine Fisheries Compact: Chapter 75.40 RCW.

75.12.280 Monofilament gill net webbing for catching salmon unlawful. It shall be unlawful for any person to install, use, operate, or maintain within any waters of the state any monofilament gill net webbing of any description for the purpose of catching salmon, and it

shall be unlawful to take salmon by any such means or with such gear. [1959 c 309 § 26.]

75.12.650 "Angling" or "personal use" gear prohibited for commercial salmon fishing. "Angling" or "personal use" gear, in accordance with the provisions of RCW 75.04.070, RCW 75.04.080, RCW 75.04.100 and under the authority set forth in RCW 75.08.080, is prohibited for commercial salmon fishing. [1969 ex.s. c 23 § 1.]

Effective date—1969 ex.s. c 23: "The provisions of this act shall become effective January 1, 1970." [1969 ex.s. c 23 § 2.] This applies to RCW 75.12.650.

Chapter 75.16 CONSERVATION AND PROPAGATION

Sections

- 75.16.010 Taking food fish for propagation purposes restricted.
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75.16.010 Taking food fish for propagation purposes restricted. It shall be unlawful for any person or government agency whatsoever, save the director and those authorized by him, to take food fish or shellfish for propagation, scientific, or other purposes within the waters of this state. The director or those authorized by him may take salmon or other food fish or shellfish for public propagation, scientific, or other purposes under such regulations as the director may prescribe to safeguard the interest of the fisheries of this state.

The director, in conjunction with the issuance of a permit and license for fish farming, may authorize taking of food fish or shellfish for propagation, under such regulations as he may prescribe to safeguard the interest of the fisheries of this state. [1971 c 35 § 1; 1955 c 12 § 75.16.010. Prior: 1949 c 112 § 42; Rem. Supp. 1949 § 5780-316.]

75.16.020 Planting fish—Consent required. It shall be unlawful to liberate, release, implant, transplant, or place food fish of any kind or description in any stream, river, pond, lake, or other waters of the state, either fresh or salt, without first obtaining the written consent of the director. [1955 c 12 § 75.16.020. Prior: 1949 c 112 § 40; Rem. Supp. 1949 § 5780-314.]

75.16.030 Prevention and suppression of infectious diseases and pests. The director shall have general supervision of the prevention of the spread and suppression of infectious, contagious, and communicable diseases and pests affecting food fish or shellfish, and shall have the power to prohibit the transportation or transplanting within the state from without, or from one area to another within the state, or the transportation from points in this state to points outside the state of any food fish or shellfish, or any material, organism, boats, scows, gear, or other equipment whatsoever which in his judgment may transmit any infectious or contagious disease or pests communicable to any food fish or shellfish.

The director shall have the power to make and enforce rules and regulations to prevent the spread, and effect the suppression of all infectious, contagious, dangerous, and communicable diseases and pests affecting food fish or shellfish. [1955 c 12 § 75.16.030. Prior: 1949 c 112 § 43; Rem. Supp. 1949 § 5780-317.]

75.16.040 Destruction of seals, sea lions, and other fish predators. The director shall cause his employees and hunters employed for the purpose, to kill and destroy seals and sea lions and other fish predators in the waters of the state and the offshore waters. He may expend such moneys as may from time to time be appropriated by the legislature for such purposes including, but not limited to purchase of firearms, ammunition, dynamite, and other materials necessary to carry out the purposes hereof. He shall keep as nearly as possible an accurate record of the number of seals and sea lions that are so destroyed.

Any person other than an employee of the department killing or causing to be killed in the waters of the state, any common seal or sea lion shall be entitled to receive a bounty of not less than three dollars nor more than ten dollars, the amount to be designated by the director, from any moneys which may be appropriated by the legislature for the purposes of this section.

All moneys appropriated for such purposes by the legislature shall be expended under the direction of and upon vouchers approved by the director, who shall adopt rules and regulations providing for the proof of such killing and the surrender and destruction of the scalp, snout, or tail of such seal or sea lion. Any person who shall receive, or attempt to receive, any bounty for the killing of any common seal or sea lion not taken in the waters of the state of Washington is guilty of a gross misdemeanor and shall pay a fine of not less than two hundred and fifty dollars. [1955 c 12 § 75.16.040. Prior: 1949 c 112 § 44; Rem. Supp. 1949 § 5780-318.]

75.16.050 Acceptance of funds or property—Disbursement of funds. The director may accept money or real property from the United States, counties, municipalities, or other governmental units, or from any person, under conditions requiring the use of such property or money for specific purposes in furtherance of the protection, rehabilitation, preservation, or conservation of the state food fish and shellfish resources, or with the advice of the attorney general, in settlement of any

claim for damages to such food fish and shellfish resources. Any real property so accepted must be useful for the protection, rehabilitation, preservation, or conservation of such fisheries resources.

The director is hereby designated the agent of the state to accept and receive all such funds and deposit them with the state treasurer who shall credit them to the contingent receipts fund created by RCW 43.79.250.

Whenever any money has been received and is to be spent for a specific purpose, the director shall submit to the governor duplicate copies of a statement setting forth the facts regarding such funds and the need for such expenditure and the estimated amount to be expended.

If the governor approves such estimate in whole or in part, he shall endorse on each copy of such statement his approval, with the amount approved, and transmit one copy of the same to the director authorizing him to make the expenditure. No expenditure shall be authorized in excess of the actual amount received, nor shall funds be expended for any purpose except the specific purpose for which they were received, unless the same were received in settlement of a claim for damages to the food fish or shellfish resources of the state, and in that event such funds so received may be expended for the protection, rehabilitation, preservation, or conservation of such resources. [1955 c 12 § 75.16.050. Prior: 1949 c 112 § 51; Rem. Supp. 1949 § 5780-325.]

75.16.060 Fish stations, laboratories—Agreements with United States, etc. (1) Consent of the state is hereby given to the United States for the continuance of present established fish cultural stations and laboratories located in this state as of April 1, 1949; for the establishment of one or more additional fish cultural stations, substations or laboratories to be constructed, maintained, and operated by the United States or the state, under the terms of agreements to be entered into between the United States and the director and the state game commission: *Provided*, That this consent shall be effective as to additional establishments only when the location of such additional establishments has been approved in advance by the director and the state game commission. The Secretary of the Interior, and his duly authorized agents are hereby accorded the right to conduct scientific investigations, fish hatching and fish cultural stations and all operations connected therewith at any and all times and in any manner that may by the Secretary be considered necessary and proper, in accordance with the provisions of certain acts of congress entitled: "An Act to provide for a five-year construction and maintenance program for the United States Bureau of Fisheries," approved May 21, 1930, and the provisions of the act of May 11, 1938 (Ch. 193, 52 Stat. 354, 16 U.S.C. 755-757), as amended by "An Act to amend the Act of May 11, 1938, for the conservation of the Fishery Resources of the Columbia River, and for other purposes," approved August 8, 1946, or acts amendatory thereof, at presently established stations and laboratories and at additional establishments when approval of the location of any such additional establishment has been given as provided in this section.

(2) The director and the state game commission are hereby authorized to enter into agreements with the United States for the construction and installation of fish cultural stations, laboratories, and devices in the Columbia River basin for improvement of feeding and spawning conditions for fish, for the protection of migratory fish from irrigation projects and for facilitating free migration of fish over obstructions, in accordance with the act of congress of May 11, 1938 (Ch. 193, 52 Stat. 354, 16 U.S.C. 755-757), as amended by "An Act to amend the Act of May 11, 1938, for the conservation of the Fishery Resources of the Columbia River, and for other purposes," approved August 8, 1946, or acts amendatory thereof.

(3) The director and the state game commission may acquire by gift, purchase, lease, easement, or condemnation the necessary title to, interest therein, rights of way over or licenses covering the use of lands where such construction or improvement is to be carried on by the United States.

(4) The director and the state game commission are hereby authorized to receive funds from the federal government for the construction, maintenance and operation of fish cultural stations, substations, laboratory or fish conservation devices or for any other purpose deemed necessary by the director or the state game commission for the rehabilitation and conservation of the fisheries resources of the Columbia River basin.

(5) After the construction and installation of any such fish cultural station, substation, laboratory or fish conservation devices, the department or the state game commission may maintain and operate the same in accordance with the terms of the agreement entered into with the United States in regard thereto. [1955 c 12 § 75.16.060. Prior: 1949 c 112 § 52; Rem. Supp. 1949 § 5780-326.]

75.16.070 Contracts and agreements as to fish or shellfish propagation. The director shall have the power to enter into contracts and agreements with the United States, or any state or territory thereof, or with any foreign government, or with any person, for the purpose of securing food fish or shellfish or eggs of the same, and for the erection and maintenance of eyeing stations, fish or shellfish hatcheries, rearing ponds, and other appliances or installations for the propagation of fish or shellfish within or without the territorial limits of the state; and the director shall execute and carry out any such contracts or agreements. [1955 c 12 § 75.16.070. Prior: 1949 c 112 § 53; Rem. Supp. 1949 § 5780-327.]

75.16.100 Fish farming—Authorized—Permit—Rules and regulations—"Cultivation" defined—Scope. The director may authorize by permit the cultivation of food fish and shellfish or other aquatic animals for commercial purposes, also known as fish farming or aquaculture, under such rules and regulations as he may prescribe. Cultivation shall include all aspects of breeding, obtaining eggs or young of, raising, preparing for consumption or for market, and marketing of the food fish, shellfish or other aquatic animals.

Cultivation may be permitted on privately owned uplands, shorelands or tidelands, as well as on publicly owned uplands, tidelands, shorelands, or beds of navigable waters in accordance with procedures established for administration of such areas.

Clam farming, oyster farming, geoduck harvesting, and other activities in the nature of cultivation already authorized or licensed are not affected by this section. [1971 c 35 § 2.]

75.16.110 Fish farming—License—Fee. A license is required for each and every fish farm operated for commercial purposes at one or more locations on uplands, shorelands, tidelands, or beds of navigable waters, or in the waters of the state. The fee for said license is one hundred dollars per annum, and shall be paid for each and every year in which food fish, shellfish or other aquatic animals are being cultivated. A separate license is required for each county of the state in which a fish farm is operated by the same person, corporation, or other entity. [1971 c 35 § 3.]

75.16.120 Fish farming—Salmon eggs for use in fish farming—Charge—Limitation. The department may supply, at a reasonable charge, surplus salmon eggs to a person, corporation or other entity for use in fish farming or aquaculture: *Provided*, That the department of fisheries shall not intentionally create a surplus of salmon to provide eggs for sale. [1974 1st ex.s. c 23 § 1; 1971 c 35 § 4.]

Chapter 75.18

PRESERVATION OF SALMON RESOURCES

Sections

75.18.005	Preamble.
75.18.010	Fishery districts created.
75.18.020	Commercial fishing—Silver salmon—District No. 1.
75.18.030	Commercial fishing—Chinook salmon—District No. 1.
75.18.040	Possession, transportation of silver salmon—District No. 1.
75.18.050	Possession, transportation of chinook salmon—District No. 1, Pacific Ocean.
75.18.060	Processors, wholesalers, etc.—Possession of silver salmon—District No. 1, Pacific Ocean.
75.18.070	Processors, wholesalers, etc.—Chinook salmon—Closed season dates, director may vary—Notice, hearing.
75.18.080	Commercial taking, transporting, delivery of salmon—Permits—Fees—Revocation.
75.18.090	Construction—1955 c 12.

75.18.005 Preamble. The state of Washington has a major and substantial interest in the fisheries and fishing industry within its boundaries and a special interest in its salmon resources. Salmon within the waters of the state, including its coastal waters and offshore waters contiguous thereto, constitute a commercial asset and a vital food resource in which the state of Washington has a special interest, in that such salmon spawn in the fresh water streams of the state of Washington, migrate to the sea and, in response to their anadromous cycle, return to the fresh water streams of Washington, from which they originate, to spawn and die. Serious conditions and hazards detrimental to the preservation of this

salmon supply have arisen and are now present, both in the fresh water streams of the state of Washington and in the salt waters of bays, inlets, canals, coves, sounds and estuaries, and in its coastal waters and offshore waters contiguous thereto, as a result of the extensive catching and taking of silver and chinook salmon within the described waters in such quantities as substantially to deplete the spawning and the source of existing and future salmon supplies and resources.

The preservation of the salmon industry and the salmon resources of the state of Washington is vital to the state's economy, and effective measures and remedies are necessary to prevent loss of such salmon resources due to the taking of immature fish and salmon present in the state's coastal and offshore waters, from which waters such salmon migrate, feed and return to the streams of this state to spawn.

It has proven impossible in seeking to regulate catching and taking of such salmon to distinguish between salmon taken from waters of the Pacific Ocean over which the state has jurisdiction and those taken outside the limits of the state's jurisdiction and brought within the boundaries of the state.

Research by the department of fisheries of the state has established that silver and chinook salmon found in the waters of district No. 2 and the Columbia River district, as herein defined, are substantially mature salmon. The silver and chinook salmon found during certain periods within the waters of district No. 1, herein defined, are for the most part immature salmon, the taking of which would prevent the return of an adequate number of such salmon to the spawning grounds in the streams of the state and risk the destruction or substantial depletion of the state's salmon resources, and would constitute an irreparable economic waste. [1955 c 12 § 75.18.005. Prior: 1953 c 147 § 1.]

75.18.010 Fishery districts created. The following fishery districts are hereby created:

(1) District No. 1, as used in this chapter, shall include the Straits of Juan de Fuca, and the waters of the Pacific Ocean over which the state of Washington has jurisdiction, exclusive of bays, inlets, canals, coves, sounds and estuaries.

(2) District No. 2, as used in this chapter, shall include all lands and waters over which the state of Washington has jurisdiction, excepting therefrom district No. 1, as herein defined. [1955 c 12 § 75.18.010. Prior: 1953 c 147 § 2.]

75.18.020 Commercial fishing—Silver salmon—District No. 1. It shall be unlawful for commercial purposes to fish for or take in the waters of district No. 1, as herein defined, silver salmon (*Oncorhynchus kisutch*) between the first day of November and the fifteenth day of June of the year following, both dates inclusive. [1955 c 12 § 75.18.020. Prior: 1953 c 147 § 3.]

75.18.030 Commercial fishing—Chinook salmon—District No. 1. It shall be unlawful for commercial purposes to fish for or take in the waters of district

No. 1, as herein defined, chinook salmon (*Oncorhynchus tshawytscha*) between the first day of November and the fourteenth day of March of the year following, both dates inclusive. [1955 c 12 § 75.18.030. Prior: 1953 c 147 § 4.]

75.18.040 Possession, transportation of silver salmon—District No. 1. It shall be unlawful for commercial purposes for any person to have in his possession or transport through the waters of district No. 1, as herein defined, any fresh silver salmon (*Oncorhynchus kisutch*) taken from said waters or from the waters of the Pacific Ocean during the period from the first day of November and the fifteenth day of June of the year following, both dates inclusive. [1955 c 12 § 75.18.040. Prior: 1953 c 147 § 5.]

75.18.050 Possession, transportation of chinook salmon—District No. 1, Pacific Ocean. It shall be unlawful for commercial purposes for any person to have in his possession or transport through the waters of district No. 1, as herein defined, any fresh chinook salmon (*Oncorhynchus tshawytscha*) taken from said waters or from the waters of the Pacific Ocean during the period from the first day of November and the fourteenth day of March of the year following, both dates inclusive. [1955 c 12 § 75.18.050. Prior: 1953 c 147 § 6.]

75.18.060 Processors, wholesalers, etc.—Possession of silver salmon—District No. 1, Pacific Ocean. It shall be unlawful for any person in the state of Washington engaged in the business of canning, packing, processing, freezing, salting, smoking, kippering, preserving in ice, or otherwise involved in dealing in or curing any food fish or shellfish, or in wholesale selling of food fish or shellfish for commercial purposes, to have in his possession any silver salmon (*Oncorhynchus kisutch*) caught or taken during the period from the first day of November of any year to the fifteenth day of June of the following year from the waters of the Pacific Ocean or district No. 1. [1955 c 12 § 75.18.060. Prior: 1953 c 147 § 7.]

75.18.070 Processors, wholesalers, etc.—Chinook salmon—Closed season dates, director may vary—Notice, hearing. It shall be unlawful for any person in the state of Washington engaged in the business of canning, packing, processing, freezing, salting, smoking, kippering, preserving in ice, or otherwise involved in dealing in or curing any food fish or shellfish, or in wholesale selling of food fish or shellfish for commercial purposes, to have in his possession any chinook salmon (*Oncorhynchus tshawytscha*) caught or taken during the period from the first day of November of any year to the fourteenth day of March of the following year from the waters of the Pacific Ocean or district No. 1: *Provided*, That with respect to the closed seasons defined in this chapter, the director of fisheries, upon due notice and hearing, and upon investigation, may, in accordance with his judgment, vary any of the opening or

closing dates thereof. Notice of such hearing shall appear in not less than two issues of a newspaper of general circulation at the state capital. [1955 c 12 § 75.18.070. Prior: 1953 c 147 § 8.]

75.18.080 Commercial taking, transporting, delivery of salmon—Permits—Fees—Revocation. Every person or persons, firm or corporation operating a fishing vessel of any description used in the commercial taking or catching of salmon in offshore waters and the transporting or bringing the same in and through the waters of the state of Washington and delivering the same in any place or port in the state of Washington shall, as a condition of doing so, obtain a permit from the director of fisheries. The fee for said permit shall be one hundred dollars for the vessel and operator and ten dollars for each member of the crew thereof, such permit to be effective during the calendar year in which issued: *Provided*, That persons operating fishing vessels licensed under RCW 75.28.085 may apply the delivery permit fee of ten dollars against the fees outlined hereinabove except those holding a valid troll license are exempt from said fees: *Provided further*, That if it appears to the director of fisheries, after investigation, that the operation of such vessel under such permit tends to result in the impairment, depletion, or destruction of the salmon resource and supply of this state and in bringing into this state salmon products prohibited by law, in that event, the director under such regulations and terms as he may prescribe, may revoke said permit to use and operate such boat in the waters of this state, and in the event of the revocation of such permit, the further operation of such vessel as hereinabove set forth shall then be unlawful. [1971 ex.s. c 283 § 1; 1955 c 12 § 75.18.080. Prior: 1953 c 147 § 9.]

Effective dates—1971 ex.s. c 283: "The provisions of this 1971 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. The provisions of sections 1 to 10 inclusive of this 1971 amendatory act shall take effect on January 1, 1972." [1971 ex.s. c 283 § 16.] This applies to RCW 75.28.081, 75.28.375 and to the 1971 amendments to RCW 75.12.010, 75.18.080, 75.28.012, 75.28.013, 75.28.060, 75.28.085, 75.28.087, 75.28.095, 75.28.130, 75.28.140, 75.28.190 and 75.28.220.

Certain license fees double as to nonresidents: RCW 75.28.375.

Permit under RCW 75.28.085 plus added fee for each man aboard will satisfy requirements of RCW 75.18.080: RCW 75.28.085.

Permittee under RCW 75.18.080 not required to obtain permit under RCW 75.28.085: RCW 75.28.085.

75.18.090 Construction—1955 c 12. Nothing in this chapter shall be construed to restrict or impair the authority of the director of fisheries consistent with and pursuant to the provisions of this chapter from issuing and publishing such regulations as, after investigation, he may deem necessary to administer this chapter and to effectuate its purposes, or to administer and effectuate all other acts governing or affecting the department of fisheries, nor shall anything herein be construed to restrict or impair the authority of the director to issue and publish regulations he may find necessary under the provisions of The Pacific Marine Fisheries Compact. [1955 c 12 § 75.18.090. Prior: 1953 c 147 § 11.]

Chapter 75.20

RESTRICTIONS AS TO DAMS, DITCHES, AND OTHER USES OF WATERS AND WATERWAYS

Sections

75.20.010	Columbia River fish sanctuary—Established.
75.20.020	Columbia River fish sanctuary—Acquisition and abatement of dams—Water rights—Condemnation actions.
75.20.030	Columbia River fish sanctuary—Rivers not included in sanctuary.
75.20.040	Fish guards required—Penalty for failure.
75.20.050	Water flow to be maintained—May refuse permit to divert water.
75.20.060	Fishways required in dams, obstructions—Remedies for failure.
75.20.061	Director may modify, etc., inadequate fishways and protective devices.
75.20.070	Unlawful to fish in or interfere with fishways, screens, etc.
75.20.080	Unlawful to interfere with or damage fish ladders, guards, etc., or fish traps.
75.20.090	If fishway is impractical, fish hatcheries may be provided in lieu.
75.20.100	Hydraulic projects or other work—Plans and specifications—Approval—Failure to follow or carry out approval conditions—Penalty.
75.20.110	Columbia River fish sanctuary—1960 act.
75.20.120	Columbia River fish sanctuary—"Person" defined.

75.20.010 Columbia River fish sanctuary—Established. All streams and rivers tributary to the Columbia River downstream from McNary Dam are hereby reserved as an anadromous fish sanctuary against undue industrial encroachment for the preservation and development of the food and game fish resources of said river system and to that end there shall not be constructed thereon any dam of a height greater than twenty-five feet that may be located within the migration range of any anadromous fish as jointly determined by the director of fisheries and the director of game, nor shall waters of the Cowlitz River or its tributaries or of the other streams within the sanctuary area be diverted for any purpose other than fisheries in such quantities that will reduce the respective stream flows below the annual average low flow, as delineated in existing or future United States Geological Survey reports: *Provided*, That when the flow of any of the streams referred to in this section is below the annual average, as delineated in existing or future United States Geological Survey reports, water may be diverted for use, subject to legal appropriation, upon the concurrent order of the director of fisheries and director of game. [1955 c 12 § 75.20.010. Prior: 1949 c 9 § 1; Rem. Supp. 1949 § 5944-2.]

75.20.020 Columbia River fish sanctuary—Acquisition and abatement of dams—Water rights—Condemnation actions. The director of fisheries and the director of game, shall acquire and abate any dam or other obstruction, or acquire any water right which may have become vested on any streams or rivers tributary to the Columbia River downstream from McNary Dam which may be in conflict with the provisions of RCW 75.20.010. Any condemnation action necessary under the provisions of this section shall be instituted under the provisions of chapter 120, Laws of 1947, and in the manner provided for the acquisition of property for

public use of the state. [1955 c 12 § 75.20.020. Prior: 1949 c 9 § 2; Rem. Supp. 1949 § 5944-3.]

75.20.030 Columbia River fish sanctuary—Rivers not included in sanctuary. The provisions of RCW 75.20.010 and 75.20.020 shall not apply to the waters of the North Fork of the Lewis River, nor the White Salmon River (Big White Salmon River). [1955 c 12 § 75.20.030. Prior: 1949 c 9 § 3; Rem. Supp. 1949 § 5944-4.]

75.20.040 Fish guards required—Penalty for failure. Every ditch, channel, canal or waterpipe used for conducting water from any lake, river or stream, for irrigation, manufacturing, domestic or other purposes, shall be provided at its entrance or intake with a fish guard so as to prevent the passage of fish into such ditch, channel or waterpipe and subject to the approval of the director, which shall be constantly maintained at all times when water is taken or admitted into such ditch, channel, canal, or waterpipe: *Provided*, That such fish guards and screens shall be installed at such places and times as shall be prescribed by the director upon thirty days' notice to the owner or owners of any such water conduit. Every owner, manager, agent or person in charge of such ditch, channel, canal, or waterpipe who shall fail to comply with the provisions of this section is guilty of a gross misdemeanor.

Each day the end of the ditch, channel, canal or waterpipe is not equipped with this covering as provided shall constitute a separate offense. If within thirty days after notice to equip any such ditch, channel, canal, or waterpipe such person shall fail to do so, the director is hereby authorized to take possession of the same in the name of the state of Washington, and to close the same to the entrance of any water until such time as the ditch shall be properly equipped, and the expense incident thereto shall constitute a lien upon the ditch, channel, canal, or waterpipe and upon the real and personal property of the person owning the same. Notice of such lien shall be filed and recorded in the office of the county auditor in the county in which such action is taken. [1955 c 12 § 75.20.040. Prior: 1949 c 112 § 45; Rem. Supp. 1949 § 5780-319.]

75.20.050 Water flow to be maintained—May refuse permit to divert water. It is hereby declared to be the policy of this state that a flow of water sufficient to support game fish and food fish populations be maintained at all times in the streams of this state.

The supervisor of hydraulics shall give the director of fisheries and the director of game notice of each application for a permit to divert water, or other hydraulic permit of any nature, and the director of fisheries and director of game shall have thirty days after receiving such notice in which to state their objections to the application, and the permit shall not be issued until such thirty days period has elapsed.

The supervisor of hydraulics may refuse to issue any permit to divert water, or any hydraulic permit of any nature, if, in the opinion of the director of fisheries or director of game, such permit might result in lowering

the flow of water in any stream below the flow necessary to adequately support food fish and game fish populations in the stream.

The provisions of this section shall in no way affect existing water rights. [1955 c 12 § 75.20.050. Prior: 1949 c 112 § 46; Rem. Supp. 1949 § 5780–320.]

75.20.060 Fishways required in dams, obstructions—Remedies for failure. Every dam or other obstruction across or in any stream shall be provided with a durable and efficient fishway, which shall be maintained in a practical and effective condition in such place, form and capacity as the director may approve, for which plans and specification shall be furnished by the director upon application to him, and which shall be kept open, unobstructed and supplied with a sufficient quantity of water to freely admit the passage of fish through the same. Every owner, manager, agent or person in charge of such dam or obstruction who shall fail to comply with the provisions of this section is guilty of a gross misdemeanor.

If any person or government agency fails to construct and maintain such fish ladder or fishway or to remove such dam or obstruction in a manner satisfactory to the director, then within thirty days after written notice thereof has been served upon the owner, his agent, or the person in charge thereof, the director may construct a suitable fish ladder or fishway, or remove such dam or obstruction, and the actual cost in case of construction of fishway thereof shall constitute a lien upon the dam and upon all the personal property of the person or government agency owning the same. Notice of such lien shall be filed and recorded in the office of the county auditor of the county in which such dam or obstruction is situated. Such lien may be foreclosed in any action brought in the name of the state.

If any person or government agency fails to make any such fishway or remove such dam or obstruction in a manner satisfactory to the director, then within thirty days after written notice thereof has been served on the owner, his agent, or the person in charge, such dam or obstruction shall thereby become a public nuisance and the director may take possession thereof in his own name or in the name of the state and destroy it and no liability shall attach for such destruction. [1955 c 12 § 75.20.060. Prior: 1949 c 112 § 47; Rem. Supp. 1949 § 5780–321.]

75.20.061 Director may modify, etc., inadequate fishways and protective devices. In the event any fish passage facility or fish protective device as set forth in RCW 75.20.040 and 75.20.060 which have been in existence or are existing at the time of enactment of this act, is determined by the director to be inadequate for the purposes for which it was intended; the director in addition to other authority granted in this chapter may in his discretion, remove, relocate, reconstruct, or modify said device, without cost for materials and labor to the owner or owners thereof: *Provided*, That the director may not materially modify the amount of flow of water through the facility or device. Thereafter such fish

passage facility or fish protective device shall be maintained at the expense of the person or governmental agency owning said obstruction or water diversion in accordance with RCW 75.20.040 and 75.20.060. [1963 c 153 § 1.]

Director of game may modify, etc., inadequate fishways and protective devices: RCW 77.16.221.

75.20.070 Unlawful to fish in or interfere with fishways, screens, etc. It shall be unlawful for any person to fish for, take, injure, kill, or molest any fish in any fishway or fish ladder, fish screens, or other protective devices, or to interfere in any manner whatsoever with the proper operation of any fishway, fish ladder, fish screens, or other protective devices. [1955 c 12 § 75.20.070. Prior: 1949 c 112 § 39; Rem. Supp. 1949 § 5780–313.]

75.20.080 Unlawful to interfere with or damage fish ladders, guards, etc., or fish traps. It shall be unlawful for any person to break open, open, unlock, damage, interfere with, injure, or destroy any fish ladder, fish guard, screen, fish stop, fish protective device, bypass, or part thereof, or any fish trap operated by the department. [1955 c 12 § 75.20.080. Prior: 1949 c 112 § 50; Rem. Supp. 1949 § 5780–324.]

75.20.090 If fishway is impractical, fish hatcheries may be provided in lieu. In the event that any person or government agency desires to construct or maintain a dam or other hydraulic work in any of the streams of this state of a type making a fish ladder or fishway thereover impracticable, in the opinion of the director, then such person or government agency, before any construction work shall commence on such dam or other hydraulic work shall at the option of the director (1) convey to the state a site or sites of a size and dimensions satisfactory to the director, at such place as may be selected by the director, and erect thereon a fish hatchery or fish hatcheries, rearing ponds and other buildings according to plans and specifications to be furnished by said person or government agency subject to the approval of the director and enter into an agreement with director secured by good and sufficient bond, to furnish all water and lights, without expense, and necessary sums of money to operate and maintain said hatchery or hatcheries and rearing ponds or (2) enter into an agreement with the director secured by good and sufficient bond to pay to the state such initial money and make such annual payments of additional money to the state as the director may determine are necessary to expand, maintain, and operate additional facilities at existing hatcheries within a reasonable distance of such dam or other hydraulic work to compensate for the damages sustained by the erection of any such dam or other hydraulic work. Any decision of the director hereunder shall be subject to review in the superior court of the state for Thurston county.

Any person or government agency who fails to comply with the provisions of this section is guilty of a gross misdemeanor and each day that such person or government agency carries on construction work on such dam

or hydraulic work or operates any such dam or hydraulic work without complying with the provisions of this section constitutes a separate offense. [1955 c 12 § 75.20.090. Prior: 1949 c 112 § 48; Rem. Supp. 1949 § 5780-322.]

75.20.100 Hydraulic projects or other work—Plans and specifications—Approval—Failure to follow or carry out approval conditions—Penalty. In the event that any person or government agency desires to construct any form of hydraulic project or other work that will use, divert, obstruct, or change the natural flow or bed of any river or stream or that will utilize any of the waters of the state or materials from the stream beds, such person or government agency shall submit to the department of fisheries and the department of game full plans and specifications of the proposed construction or work, complete plans and specifications for the proper protection of fish life in connection therewith, the approximate date when such construction or work is to commence, and shall secure the written approval of the director of fisheries and the director of game as to the adequacy of the means outlined for the protection of fish life in connection therewith and as to the propriety of the proposed construction or work and time thereof in relation to fish life, before commencing construction or work thereon. If any person or government agency commences construction on any such works or projects without first providing plans and specifications subject to the approval of the director of fisheries and the director of game for the proper protection of fish life in connection therewith and without first having obtained written approval of the director of fisheries and the director of game as to the adequacy of such plans and specifications submitted for the protection of fish life, or if any person or government agency fails to follow or carry out any of the requirements or conditions as are made a part of such approval, he is guilty of a gross misdemeanor. If any such person or government agency be convicted of violating any of the provisions of this section and continues construction on any such works or projects without fully complying with the provisions hereof, such works or projects are hereby declared a public nuisance and shall be subject to abatement as such.

Provided, That in case of an emergency arising from weather or stream flow conditions the department of fisheries or department of game, through their authorized representatives, shall issue oral permits to a riparian owner for removing any obstructions or for repairing existing structures without the necessity of submitting prepared plans and specifications. [1967 c 48 § 1; 1955 c 12 § 75.20.100. Prior: 1949 c 112 § 49; Rem. Supp. 1949 § 5780-323.]

75.20.110 Columbia River fish sanctuary—1960 act. For the purpose of conserving the state's fishery resources the powers of any person authorized to construct or operate dams or to appropriate water in the state are hereby limited in that no such person shall construct, complete or operate, either for himself or as an agent or independent contractor for another, any

dam or other obstruction over twenty-five feet high on any tributary stream of the Columbia River downstream from McNary Dam, including the Cowlitz River and its tributaries, within the migration range of anadromous fish as jointly determined by the directors of fisheries and game, except the north fork of the Lewis River and the White Salmon River (Big White Salmon River), nor shall any such person obtain or use a federal license for such purpose; nor shall any such person divert any water from any such stream in such quantities that will reduce the respective stream flows below the annual average low flow as set forth in existing or future United States Geological reports: *Provided*, That when the flow is below such annual average low flow, then such person may divert water, subject to legal appropriation, only upon the concurrent order of the directors of fisheries and game. [1961 c 4 § 1; Initiative Measure to the Legislature No. 25.]

Severability—1961 c 4: "If any section or provision or part thereof of this act shall be held unconstitutional or for any other reason invalid, the invalidity of such section, provision or part thereof shall not affect the validity of the remaining sections, provisions or parts thereof which are not judged to be invalid or unconstitutional." [1961 c 4 § 3; Initiative Measure to the Legislature No. 25.] This applies to RCW 75.20.110 and 75.20.120.

75.20.120 Columbia River fish sanctuary—"Person" defined. The term "person" as used in RCW 75.20.110 shall include any municipal corporation or other political subdivision of this state or another state, any other public or quasi-public corporation, any private corporation or other organization organized under the laws of this state or another state, and any individual or group of individuals. [1961 c 4 § 2; Initiative Measure to the Legislature No. 25.]

Chapter 75.24 SHELLFISH

Sections

75.24.010	Oyster reserves established.
75.24.020	Oyster reserve boundaries marked.
75.24.030	Sale, lease, disposal of oyster reserves.
75.24.040	Taking shellfish from oyster reserves.
75.24.050	Taking shellfish contrary to law or orders—Penalty—Confiscation of property.
75.24.060	Reserves to be productive, self-maintaining—Furnish shellfish stock—Development—Harvesting for personal use, when.
75.24.070	Sale of shellfish from reserves.
75.24.080	Infested shellfish areas—Designation—Restrictions.
75.24.090	Culled shellfish must be returned to beds—Penalty.
75.24.100	Geoduck clams, harvesting for commercial purposes—License—Gear—Director may impose limitations.

Destruction of oyster bed, stake or buoy: RCW 9.61.040.

Interference with oysters or shellfish: RCW 9.61.040.

Sanitary control of shellfish: Chapter 69.30 RCW.

75.24.010 Oyster reserves established. The following named areas constitute the existing oyster reserves of the state, such reserves being more completely described in maps and plats on file in the office of the commissioner of public lands and in the office of the auditor of the county in which the reserve is located:

1. PUGET SOUND OYSTER RESERVES:

- (a) Totten Inlet reserves (sometimes known as Oyster Bay reserves), located in Totten Inlet, Thurston county;
- (b) Eld Inlet reserves (sometimes known as Mud Bay reserves), located in Mud Bay, Thurston county;
- (c) Oakland Bay reserves, located in Oakland Bay, Mason county;
- (d) North Bay reserves (sometimes known as Case Inlet reserves), located in Case Inlet, Mason county.

2. WILLAPA HARBOR OYSTER RESERVES:

- (a) Nemah reserve, south and west sides of reserve located along Nemah River channel, Pacific county;
- (b) Long Island reserve, located at south end and along west side of Long Island, Willapa Harbor, Pacific county;
- (c) Long Island Slough reserve, located at south end and along east side of Long Island, Willapa Harbor, Pacific county;
- (d) Bay Center reserve, located in the Palix River channel, extending from Palix River bridge to beyond Bay Center to north of Goose Point, Willapa Harbor, Pacific county;
- (e) Willapa River reserve, located in the Willapa River channel extending west and up-river from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel, Willapa Harbor, Pacific county. [1955 c 12 § 75.24.010. Prior: 1949 c 112 § 54; Rem. Supp. 1949 § 5780-401.]

75.24.020 Oyster reserve boundaries marked. As soon as an appropriation is made therefor, the director shall erect monuments, establishing the boundaries of the several oyster reserves in the state. [1955 c 12 § 75.24.020. Prior: 1949 c 112 § 58; Rem. Supp. 1949 § 5780-405.]

75.24.030 Sale, lease, disposal of oyster reserves. The oyster reserves of the state shall not be sold, leased, or otherwise disposed of: *Provided*, That in event the director recommends the sale, lease, or disposal of any of the reserves, or parts thereof, the same may be sold, leased or disposed of by the land commissioner in the manner provided by law for the sale, lease, or disposal of state land. [1955 c 12 § 75.24.030. Prior: 1949 c 112 § 55; Rem. Supp. 1949 § 5780-402.]

75.24.040 Taking shellfish from oyster reserves. It shall be unlawful to take shellfish from the oyster reserves of the state except as authorized by the director. [1955 c 12 § 75.24.040. Prior: 1949 c 112 § 6C. Rem. Supp. 1949 § 5780-407.]

75.24.050 Taking shellfish contrary to law or orders—Penalty—Confiscation of property. If any person takes oysters or clams from any of the state oyster reserves or any tideland under the jurisdiction of the state of Washington, contrary to statutes or orders of the director, or goes upon said oyster or clam land and rakes up, or otherwise prepares oysters or clams to

facilitate the taking of same, he is guilty of a gross misdemeanor, and any oyster or clam taking appliance such as boats, dredges, motor vehicles or other appliances used in violation of such statutes or any of such orders may be seized by the director and shall be confiscated by the state. [1955 c 12 § 75.24.050. Prior: 1949 c 112 § 62; Rem. Supp. 1949 § 5780-409.]

75.24.060 Reserves to be productive, self-maintaining—Furnish shellfish stock—Development—Harvesting for personal use, when. It is hereby declared to be the policy of the state to improve the oyster reserves of the state to the end that all may finally become productive, and to have these reserves yield a revenue sufficient for their maintenance and betterment. In fixing the price at which oysters and other shellfish shall be sold from the reserves, the director shall take into consideration such policy. It is further declared to be the policy of the state to maintain the oyster reserves for the purpose of furnishing a supply of shellfish to growers and processors and for the stocking of public beaches: *Provided*, That shellfish may be harvested for personal use as prescribed by the director.

The director shall protect all reserves, reseed, replant, issue cultch permits and do such other things as in his judgment are necessary for their care and protection. [1969 ex.s. c 91 § 1; 1955 c 12 § 75.24.060. Prior: 1949 c 112 § 56; Rem. Supp. 1949 § 5780-403.]

75.24.070 Sale of shellfish from reserves. The director shall have the power to determine whether oysters and other shellfish from the oyster reserves of the state shall be sold by the bushel at a price set by the director or whether certain quantities or all of such oysters and other shellfish should be sold for cash at public auction or by sealed bids in such amounts as the director shall from time to time determine.

To maintain the permanency of local communities and industries, the prospects of fulfillment of contract requirement, and to restrain monopolistic controls endangering competition in the industry, the director shall have the power to determine the number of bushels which shall be sold to any person, firm, or corporation; and when sold at public auction, the right to reject any and all bids.

The director shall have the power to determine the time, place, and manner of holding the auctions and sales provided for in this section. [1955 c 12 § 75.24.070. Prior: 1949 c 112 § 57; Rem. Supp. 1949 § 5780-404.]

75.24.080 Infested shellfish areas—Designation—Restrictions. The director shall have the power to determine and designate areas in which infection or infestation of shellfish is present. These shall be called "restricted shellfish areas." No person shall transplant any shellfish within such restricted areas nor transport any shellfish, or any material, or organism, or boats, scows, or other equipment used in taking, handling, or processing shellfish into or out of such restricted areas without first having obtained a permit from the director. [1955 c 12 § 75.24.080. Prior: 1949 c 112 § 59; Rem. Supp. 1949 § 5780-406.]

75.24.090 Culled shellfish must be returned to beds—Penalty. It shall be unlawful for any person to destroy oysters or clams taken from their natural beds, by assorting and culling them on land or shore and leaving the culled oysters or clams there to die; but in all cases the culled oysters or clams must be returned to their natural beds, or to the private beds for cultivation, except as the director may otherwise provide. [1955 c 212 § 7; 1955 c 12 § 75.24.090. Prior: 1949 c 112 § 61; Rem. Supp. 1949 § 5780–408.]

75.24.100 Geoduck clams, harvesting for commercial purposes—License—Gear—Director may impose limitations. The director of fisheries may at his discretion and with the approval of the commissioner of public lands issue licenses for the harvesting of geoduck clams for commercial purposes from leased beds of navigable waters of the state of Washington except that he may not authorize harvesting for commercial purposes on bottoms which are shallower than ten feet below mean lower low water (o.o. ft.), or which lie in an area bounded by the line of ordinary high tide (mean high tide) and a line one-quarter mile seaward from and parallel to said line of ordinary high tide. If the director shall determine that the numbers of units of gear are sufficient to harvest the known available crop and that additional units of gear might prove damaging to the resource or its habitat, he may suspend the issuance of such additional licenses for the balance of any given year or until he determines there is need for additional units of gear to achieve a sustained harvest. All harvesting shall be done with hand held, manually operated water jet or suction device guided and controlled from under water by scuba or other diver. The director shall also determine from time to time the effect of each type or unit of gear upon the geoduck population or the substrate they inhabit and he may require modification of the gear or cessation of its use if he determines that it is being operated in a wasteful or destructive manner or that its operation tends to cause permanent damage to the bottom or adjacent shellfish populations. [1969 ex.s. c 253 § 1.]

Liberal construction—1969 ex.s. c 253: "The provisions of this act shall be liberally construed." [1969 ex.s. c 253 § 5.] This refers to RCW 75.24.100, 75.28.280, 75.28.281 and 75.28.287.

Severability—1969 ex.s. c 253: "If any provisions of this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 253 § 6.] This applies to RCW 75.24.100, 75.28.280, 75.28.281 and 75.28.287.

Chapter 75.28 LICENSES

Sections

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75.28.170	Drag seine license.
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75.28.325	Custom canning license—Container markings—Commingling prohibited.
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75.28.485 Limitation upon salmon licenses and delivery permits—Evaluation—Recommendations.

75.28.010 License required—Penalty. It shall be unlawful for any person to engage in any phase of the commercial fishing industry or to operate any fishing gear known as or classified as commercial fishing gear by the director, or to fish for, take, deliver, or land any fish in the state, whether taken from waters within or without the jurisdiction of the state, without first obtaining and having in possession such licenses or delivery permits as are herein specified.

Any person violating any of the provisions of this chapter is guilty of a gross misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars. [1959 c 309 § 2; 1955 c 12 § 75.28.010. Prior: 1949 c 112 § 73; Rem. Supp. 1949 § 5780-511.]

75.28.012 Licensing districts—Created. The following licensing districts are hereby created:

(1) Puget Sound licensing district shall include those waters of the Strait of Juan de Fuca, Georgia Strait, Puget Sound and all bays, inlets, canals, coves, sounds and estuaries lying inside, easterly and southerly of the international boundary line and a line at the entrance to the Strait of Juan de Fuca projected northerly from Cape Flattery to Bonilla Point on Vancouver Island.

(2) Grays Harbor-Columbia river licensing district shall include those waters of Grays Harbor and tributary estuaries lying inside and easterly of a line projected northerly from Point Chehalis Light to Point Brown and those waters of the Columbia river and tributary sloughs and estuaries lying inside and easterly of a line at the entrance to the Columbia river projected southerly from the most westerly point of the North jetty to the most westerly point of the South jetty.

(3) Willapa Bay-Columbia river licensing district shall include those waters of Willapa Bay and tributary estuaries lying inside and easterly of a line projected northerly from Leadbetter Point to Cape Shoalwater Light and those waters of the Columbia river and tributary sloughs described in subsection (2). [1971 ex.s. c 283 § 2; 1957 c 171 § 1.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.013 Licensing districts—Separate licenses required in each district—Fees. Every owner of a commercial fishing vessel shall obtain an annual commercial salmon fishing license, for each licensing district, used in the lawful commercial taking of salmon therein. The fees for such commercial salmon fishing license shall be in the amounts as set forth in this chapter prescribed by the type of gear employed in the taking of food fish. The license fees for such fishing in one district only shall be in the amounts as set forth in this chapter. Such license fees for such fishing in more than one district shall be, in each such additional district, the amounts required for fishing in one district only: *Provided*, That additional licenses shall not be required for fishing in more than one district for species of fish other

than salmon. [1971 ex.s. c 283 § 3; 1959 c 309 § 3; 1957 c 171 § 2.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.014 Licensing districts—Application for licenses. Applications accompanied by the prescribed fees for the licenses required in RCW 75.28.013, as amended, shall be made in person, or postmarked not later than midnight of April 15th of the year in which the commercial salmon fishing license is to be effected. [1965 ex.s. c 57 § 1; 1959 c 309 § 4; 1957 c 171 § 3.]

75.28.020 Qualifications for license—Oregon licenses recognized in concurrent waters, conditions. No license provided for in this title shall be issued to any person who is not a citizen of the United States, or who is not a bona fide resident of the United States, or who is not of the age of sixteen years or over; nor shall any license be issued to any corporation unless it is authorized to do business in this state: *Provided*, That each license issued by the state of Oregon which is comparable and similar to a license provided for in this title shall be recognized as valid by this state in the concurrent waters of the Columbia River only if such license is valid within the jurisdiction of the issuing state, and if the state of Oregon recognizes as valid a comparable and similar license issued by this state. [1963 c 171 § 1; 1955 c 12 § 75.28.020. Prior: 1953 c 207 § 9; 1949 c 112 § 63; Rem. Supp. 1949 § 5780-501.]

75.28.030 Application for license. The director shall issue commercial fishing licenses and delivery permits herein required to any qualified person, upon the receipt of a lawful application therefor upon a blank to be furnished for that purpose, accompanied by the required fee. Applicants for delivery permits and all commercial fishing licenses shall indicate at the time of application the species of fish or shellfish that the applicants intend to take or catch and the type of gear they intend to use in the taking or catching of the fish or shellfish. [1959 c 309 § 7; 1955 c 12 § 75.28.030. Prior: 1953 c 207 § 2; 1949 c 112 § 65; Rem. Supp. 1949 § 5780-503.]

75.28.040 Expiration and renewal of licenses. All licenses shall expire at the close of the thirty-first day of December following their issuance, and shall be renewed annually thereafter upon application and payment of license fees required by this title. [1955 c 212 § 2; 1955 c 12 § 75.28.040. Prior: 1949 c 112 § 64; Rem. Supp. 1949 § 5780-502.]

75.28.050 Compensation fee to person issuing license. Any person deputized by the director to issue fishing licenses may charge the sum of twenty-five cents in addition to collecting the fee prescribed by law, for issuing each such license, which shall be retained by him for his services. [1955 c 12 § 75.28.050. Prior: 1949 c 112 § 17; Rem. Supp. 1949 § 5780-216.]

75.28.060 Licenses transferable—Gear operated by nonresident. All commercial fishing licenses provided for in this chapter shall be transferable. It shall be unlawful for any license to be operated or caused to be operated by any person other than the person listed as operator on the license. In the event gear is operated by a nonresident, the gear shall be licensed as nonresident gear. In the event a commercial license is transferred from a resident of the state of Washington to a nonresident the transferee shall be required to pay the difference between the fees for a resident and nonresident licensee. [1971 ex.s. c 283 § 4; 1965 ex.s. c 30 § 1; 1959 c 309 § 8; 1955 c 212 § 3; 1955 c 12 § 75.28.060. Prior: 1951 c 271 § 5; 1949 c 112 § 74, part; Rem. Supp. 1949 § 5780-512, part.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.070 Carrying or display of certain other licenses. Fishing guide licenses, fish buyer licenses, and personal commercial fishing licenses shall be carried on the person of the licensee. Fish broker licenses, clam or oyster farm licenses, oyster reserve licenses, wholesale fish dealer licenses, retail fish dealer licenses, fish canning licenses, fish byproducts licenses, boat house operator licenses, and branch licenses shall be kept and displayed at the business premises of the licensee. [1955 c 12 § 75.28.070. Prior: 1949 c 112 § 74, part; Rem. Supp. 1949 § 5780-512, part.]

75.28.081 Personal commercial fishing license. A personal commercial fishing license shall be obtained by each and every person who takes or assists in taking any salmon while on board a commercially licensed trolling vessel trolling for salmon in waters within the territorial boundaries of the state of Washington or who sells his commercial catch in the state of Washington.

The fee for such license is ten dollars per annum.

The personal license shall be carried on the person whenever such person is engaged in the taking, landing, or selling of any salmon: *Provided*, That this section does not apply to owners or operators licensed pursuant to RCW 75.28.085 or owners licensed pursuant to RCW 75.28.095. [1971 ex.s. c 283 § 14.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.085 Delivery permit. Every person, or persons or corporations operating a fishing vessel of any description used in the commercial taking or catching of food fish or shellfish, other than salmon, in offshore waters, and the transportation or possession of food fish or shellfish, other than salmon, through the waters of the state of Washington, and delivering the food fish or shellfish, other than salmon, in any port in the state of Washington shall as a condition of doing so, obtain a delivery permit from the director of fisheries. The fees for such permit shall be ten dollars: *Provided*, That any permittee under RCW 75.18.080 will not be required to obtain the above prescribed permit. Possessors of the

above described permit who wish to gain a vessel delivery permit under RCW 75.18.080 as now or hereafter amended may upon application to the director of fisheries apply the ten dollar fee for the delivery permit against the cost of the vessel delivery permit set forth in RCW 75.18.080 as now or hereafter amended. [1971 ex.s. c 283 § 5; 1965 ex.s. c 73 § 1; 1959 c 309 § 5.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.087 Owner's commercial fishing license. Every owner of a commercial fishing vessel shall obtain an annual commercial fishing license, not otherwise provided for in this chapter, for the taking of food fish and shellfish within the state of Washington: *Provided*, That holders of commercial salmon fishing licenses as set forth in this chapter may retain incidentally caught food fish other than salmon, and: *Provided, further*, That licensed oyster and clam farmers are not subject to this section. The fees for commercial fishing licenses required in this section shall be in the amounts set forth in this chapter prescribed by the type gear employed in the taking of food fish and shellfish. [1971 ex.s. c 283 § 6; 1959 c 309 § 6.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.095 Charter boat license—Restrictions. Every owner of a vessel used as a charter boat from which food fish are taken for personal use shall obtain a yearly charter boat license for each such vessel, and the fee for said license shall be fifty dollars per annum for residents and one hundred dollars per annum for nonresidents. "Charter boat" means any vessel from which persons may, for a fee, angle for food fish, and which delivers food fish taken from waters either within or without the territorial boundaries of the state of Washington into state ports.

No vessel may engage in both charter or sports fishing and commercial fishing on the same day. A vessel may be licensed for both charter boat fishing and for commercial fishing at the same time: *Provided*, That the license and delivery permit allowing the the activity not being engaged in shall be deposited with the fisheries patrol officer for that area or an agent designated by the director.

Nothing in this section shall be construed to mean that vessels not generally engaged in charter boat fishing, and under private lease or charter being operated by the lessee for the lessee's personal recreational enjoyment shall be included under the provisions of this section. [1971 ex.s. c 283 § 15; 1969 c 90 § 1.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.100 Commercial fishing license, delivery permit—Application, certificate of registration and plates—Transfer—Fees—Loss of plates. Each annual application for a commercial fishing license or a

delivery permit provided for in this chapter shall contain the name and address of the owner of the vessel, the name and address of the operator of the vessel, the name and number of the vessel, a description of the vessel and fishing gear to be carried thereon, and such information as may be required by the department.

At the time of issuance of such licenses or delivery permit the director shall furnish each applicant with a certificate of registration and two license plates with the registration number stamped thereon. Such registration shall be known as the "State of Washington license and registration number" and shall be transferable. The registration certificate shall be carried aboard the vessel at all times and the license plates shall be affixed and carried in plain sight on each side of the vessel well forward.

The license or delivery permit provided for herein shall be invalid in the event the vessel is operated by anyone other than the operator listed in the application. In the event of change of name, ownership or operator of the vessel, the director shall be notified in writing and will issue a new certificate of registration which will effect a change of name or ownership or operator, as the case may be. A fee of ten dollars shall be charged for the new certificate of registration.

Registrants shall report immediately any change of name, ownership, or operator of the vessel. Defaced, mutilated, or lost license plates shall be replaced immediately and a fee of two dollars shall be charged for such new plates. [1959 c 309 § 9; 1955 c 12 § 75.28.100. Prior: 1951 c 271 § 8; 1949 c 112 § 68; Rem. Supp. 1949 § 5780-506.]

75.28.110 Hand line or jig line license. The fee for all licenses prescribed in this chapter employing hand lines or jig lines in the taking of fish and shellfish shall be twenty-seven dollars and fifty cents per annum for residents and fifty-five dollars per annum for nonresidents. Each license shall entitle the licensee to use three hooks only. [1965 ex.s. c 73 § 2; 1959 c 309 § 10; 1955 c 12 § 75.28.110. Prior: 1951 c 271 § 9; 1949 c 112 § 69(1); Rem. Supp. 1949 § 5780-507(1).]

75.28.120 Set line license. The fee for all licenses prescribed in this chapter employing set lines in the taking of fish and shellfish shall be thirty-five dollars per annum for residents and seventy dollars per annum for nonresidents. Each license shall entitle the licensee to use no more than three set lines of not more than five hundred hooks to each set line. [1965 ex.s. c 73 § 3; 1959 c 309 § 11; 1955 c 12 § 75.28.120. Prior: 1951 c 271 § 10; 1949 c 112 § 69(2); Rem. Supp. 1949 § 5780-507(2).]

75.28.130 Troll line license. The fee for all licenses prescribed in this chapter employing troll lines in the taking of salmon shall be one hundred dollars per annum. Each license shall entitle the licensee to use six or less troll lines.

The fee for all licenses prescribed in this chapter employing troll lines in the taking of food fish, other than salmon, shall be twenty-seven dollars and fifty cents

per annum. Each license shall entitle the licensee to use six or less troll lines. [1971 ex.s. c 283 § 7; 1965 ex.s. c 73 § 4; 1959 c 309 § 12; 1955 c 12 § 75.28.130. Prior: 1951 c 271 § 11; 1949 c 112 § 69(3); Rem. Supp. 1949 § 5780-507(3).]

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.140 Gill net license. The fee for all licenses prescribed in this chapter employing gill nets in the taking of food fish shall be one hundred dollars per annum.

A valid Grays Harbor-Columbia river or Willapa Harbor-Columbia river commercial salmon fishing gill net license shall also be valid when lawfully fishing for sturgeon, smelt and shad in the licensing district for which said license is issued. [1971 ex.s. c 283 § 8; 1965 ex.s. c 73 § 5; 1959 c 309 § 13; 1955 c 12 § 75.28.140. Prior: 1951 c 271 § 12; 1949 c 112 § 69(4); Rem. Supp. 1949 § 5780-507(4).]

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.150 Set net license. The fee for all licenses prescribed in this chapter employing set nets in the taking of fish and shellfish shall be thirty-five dollars per annum for residents and seventy dollars per annum for nonresidents. [1965 ex.s. c 73 § 6; 1959 c 309 § 14; 1955 c 12 § 75.28.150. Prior: 1951 c 271 § 13; 1949 c 112 § 69(5); Rem. Supp. 1949 § 5780-507(5).]

75.28.160 Dip bag net license. The fee for all licenses prescribed in this chapter employing dip bag nets in the taking of fish and shellfish shall be twenty-seven dollars and fifty cents per annum for residents and fifty-five dollars per annum for nonresidents. [1965 ex.s. c 73 § 7; 1959 c 309 § 15; 1955 c 12 § 75.28.160. Prior: 1951 c 271 § 14; 1949 c 112 § 69(6); Rem. Supp. 1949 § 5780-507(6).]

75.28.170 Drag seine license. The fee for all licenses prescribed in this chapter employing drag seines in the taking of fish and shellfish shall be forty-five dollars per annum for residents and seventy dollars per annum for nonresidents. [1965 ex.s. c 73 § 8; 1959 c 309 § 16; 1955 c 12 § 75.28.170. Prior: 1951 c 271 § 15; 1949 c 112 § 69(7); Rem. Supp. 1949 § 5780-507(7).]

75.28.180 Lampara net license. The fee for all licenses prescribed in this chapter employing lampara nets in the taking of fish and shellfish shall be fifty-seven dollars and fifty cents per annum for residents and one hundred fifteen dollars per annum for nonresidents. [1965 ex.s. c 73 § 9; 1959 c 309 § 17; 1955 c 12 § 75.28.180. Prior: 1951 c 271 § 16; 1949 c 112 § 69(8); Rem. Supp. 1949 § 5780-507(8).]

75.28.190 Purse seine (drum, table, power block) license. The fee for all licenses prescribed in this chapter employing purse seines (drum seines, table seines, power block seines) in the taking of food fish shall be two hundred dollars per annum. [1971 ex.s. c 283 § 9; 1965 ex.s. c 73 § 10; 1959 c 309 § 18; 1955 c 12 § 75.28.190. Prior: 1951 c 271 § 17; 1949 c 112 § 69(9); Rem. Supp. 1949 § 5780-507(9).]

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.210 Otter trawl, beam trawl, shrimp trawl license. The fee for all licenses prescribed in this chapter employing otter trawls, beam trawls or shrimp trawls in the taking of fish or shellfish shall be eighty-seven dollars and fifty cents per annum for residents and one hundred thirty-five dollars per annum for nonresidents. [1965 ex.s. c 73 § 11; 1959 c 309 § 19; 1955 c 12 § 75.28.210. Prior: 1951 c 271 § 19; 1949 c 112 § 69(11); Rem. Supp. 1949 § 5780-507(11).]

75.28.220 Reef net license. The fee for all licenses prescribed in this chapter employing reef nets in the taking of food fish shall be one hundred dollars per annum. [1971 ex.s. c 283 § 10; 1965 ex.s. c 73 § 12; 1959 c 309 § 20; 1955 c 12 § 75.28.220. Prior: 1951 c 271 § 20; 1949 c 112 § 69(12); Rem. Supp. 1949 § 5780-507(12).]

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.230 Fyke net license. The fee for all licenses prescribed in this chapter employing fyke nets in the taking of fish and shellfish shall be twenty-five dollars per annum for residents and forty dollars per annum for nonresidents. [1965 ex.s. c 73 § 13; 1959 c 309 § 21; 1955 c 12 § 75.28.230. Prior: 1951 c 271 § 21; 1949 c 112 § 69(13); Rem. Supp. 1949 § 5780-507(13).]

75.28.240 Brush weir license. The fee for all licenses prescribed in this chapter employing brush weirs in the taking of fish and shellfish shall be eighty-five dollars per annum for residents and one hundred and sixty dollars per annum for nonresidents. [1965 ex.s. c 73 § 14; 1959 c 309 § 22; 1955 c 12 § 75.28.240. Prior: 1951 c 271 § 22; 1949 c 112 § 69(14); Rem. Supp. 1949 § 5780-507(14).]

75.28.250 Ring net license. The fee for all licenses prescribed in this chapter employing ring nets in the taking of fish and shellfish shall be twenty-seven dollars and fifty cents per annum for residents and forty-five dollars per annum for nonresidents. [1965 ex.s. c 73 § 15; 1959 c 309 § 23; 1955 c 12 § 75.28.250. Prior: 1951 c 271 § 23; 1949 c 112 § 69(15); Rem. Supp. 1949 § 5780-507(15).]

75.28.255 Carp license. A license is required for the taking or catching of carp for commercial purposes with any gear authorized by the director in the waters of the

state, for which license there shall be paid a fee of five dollars. [1955 c 212 § 5.]

75.28.260 Bottom fish or devil fish pots license. The fee for all licenses prescribed in this chapter employing bottom fish or devil fish pots in the taking of fish or shellfish shall be thirty-five dollars per annum for residents and sixty dollars per annum for nonresidents. For each bottom fish pot in excess of one hundred there shall be paid an additional fee of twenty-five cents per annum by residents and fifty cents per annum by nonresidents. [1965 ex.s. c 73 § 16; 1959 c 309 § 24; 1955 c 12 § 75.28.260. Prior: 1951 c 271 § 24; 1949 c 112 § 69(16); Rem. Supp. 1949 § 5780-507(16).]

75.28.270 Shellfish pots license. The fee for all licenses prescribed in this chapter employing shellfish pots in the taking of fish and shellfish shall be thirty-five dollars per annum for residents and sixty dollars per annum for nonresidents. For each shellfish pot in excess of one hundred there shall be paid an additional fee of twenty-five cents per annum by residents and fifty cents per annum by nonresidents. [1965 ex.s. c 73 § 17; 1959 c 309 § 25; 1955 c 12 § 75.28.270. Prior: 1951 c 271 § 25; 1949 c 112 § 69(17); Rem. Supp. 1949 § 5780-507(17).]

75.28.280 Clam farm license. A license is required for each and every clam farm of one or more tracts of land being operated for commercial purposes on privately owned or leased tidelands and on leased beds of navigable waters in the state. The fee for said license is fifteen dollars per annum, and shall be paid for each and every year in which clams are removed from the clam farm for purposes of sale. A separate license is required for each clam farm being operated within each of the following clam districts; northern Puget Sound district, southern Puget Sound district, Grays Harbor district, and Willapa Harbor district; said districts are to include the waters, beds, shores, beaches, and tidelands of, northern Puget Sound, southern Puget Sound, Grays Harbor, and Willapa Harbor, respectively, as geographically defined by the director of fisheries under appropriate regulations. [1969 ex.s. c 253 § 3; 1955 c 212 § 8; 1955 c 12 § 75.28.280. Prior: 1951 c 271 § 26; 1949 c 112 § 70; Rem. Supp. 1949 § 5780-508.]

Construction—Severability—1969 ex.s. c 253: See notes following RCW 75.24.100.

75.28.281 Oyster farm license. A license is required for each and every oyster farm being operated for commercial purposes on privately owned or leased tidelands and on leased beds of navigable waters in the state. The fee for said license is fifteen dollars per annum, and shall be paid for each and every year in which oysters are removed from the oyster farm for purposes of sale as seed stock or otherwise. A separate license is required for each oyster farm being operated within each of the following oyster districts: northern Puget Sound district, southern Puget Sound district, Grays Harbor district, and Willapa Harbor district; said districts are

to include the waters, beds, shores, beaches, and tidelands of, northern Puget Sound, southern Puget Sound, Grays Harbor, and Willapa Harbor, respectively, as geographically defined by the director of fisheries under appropriate regulations. [1969 ex.s. c 253 § 2; 1955 c 212 § 9.]

Construction—Severability—1969 ex.s. c 253: See notes following RCW 75.24.100.

75.28.282 Clam farm license, oyster farm license—Who must obtain. A clam farm license or an oyster farm license or both as provided in RCW 75.28.280 and 75.28.281 shall be required of:

(1) Any person or company owning and operating an oyster farm or clam farm or both;

(2) Any lessee operating an oyster farm or clam farm or both, except when the owner thereof comes within the provisions of subsection (3) of this section;

(3) Any person or company owning an oyster farm or a clam farm or both, operated by a lessee or another, which owner handles, processes, sells, or otherwise deals in the oysters or clams or both produced thereon, which are received by the owner as total or partial consideration for the use of the oyster or clam farm or both. [1955 c 212 § 10.]

75.28.285 Clam digger's license—Unlawful to dig hard shell clams for commercial purposes. A clam digger's license shall be required of any person digging clams for commercial purposes from the waters or beaches of this state, and the fee for such license shall be five dollars per season, as defined by the director of fisheries, for razor clams: *Provided*, That such license shall not be required for licensed clam farmers or their agents or employees who dig only on licensed clam farms.

It shall be unlawful for any person to dig hard shell clams for commercial purposes from the waters or beaches of this state: *Provided*, That it shall be lawful to dig hard shell clams for commercial purposes on licensed clam farms. [1965 ex.s. c 27 § 1; 1955 c 12 § 75.28.285. Prior: 1951 c 271 § 44.]

75.28.287 License for gear where harvesting head controlled by hand—License for mechanical and/or hydraulic device used taking clams. A license is required for gear in which the harvesting head is directly guided or controlled by hand, the fee for which license shall be one hundred dollars per annum.

A license is required for each and every mechanical and/or hydraulic device operated for the purpose of taking clams other than geoduck clams for commercial purposes from tidelands and beds of navigable waters of the state of Washington, the fee for which license shall be three hundred dollars per annum. [1969 ex.s. c 253 § 4.]

Construction—Severability—1969 ex.s. c 253: See notes following RCW 75.24.100.

Geoduck clams, harvesting for commercial purposes—License: RCW 75.24.100.

75.28.290 Oyster reserve license. An oyster reserve license is required of any person taking shellfish for commercial purposes from the reserves of this state. The fee for such license is fifteen dollars per annum. [1969 ex.s. c 91 § 2; 1955 c 12 § 75.28.290. Prior: 1951 c 271 § 27; 1949 c 112 § 71; Rem. Supp. 1949 § 5780-509.]

75.28.300 Wholesale fish dealer's license. A wholesale fish dealer's license is required for:

(1) Any business in the state engaged in the freezing, salting, smoking, kippering, preserving in ice or any processing or curing of any food fish or shellfish, or the shucking or cleaning of shellfish for commercial purposes;

(2) Any business in the state engaged in the wholesale selling or buying of food fish or shellfish except those businesses which buy exclusively from Washington licensed wholesale dealers and sell solely at retail; and

(3) Any fisherman or clam or oyster farmer who lands his catch or his shellfish harvest in the state of Washington and sells it directly to retail fish or shellfish dealers located either within or outside the state of Washington as well as to wholesale dealers, canners, freezers, or processors located outside the state of Washington.

The fee for said permit is thirty-seven dollars and fifty cents per annum. This section shall not apply to persons buying or selling oyster seed for transplant. [1965 ex.s. c 28 § 1; 1955 c 212 § 11; 1955 c 12 § 75.28.300. Prior: 1951 c 271 § 28; 1949 c 112 § 72(1); Rem. Supp. 1949 § 5780-510(1).]

75.28.310 Retail fish dealer's license. A retail fish dealer's license is required for any business in the state engaged in the selling of fresh, frozen, or cured food fish or shellfish directly to the consumer whether or not such business involves the taking or catching of such food fish or shellfish, and the fee for said license is five dollars per annum for the principal place of business of such retail fish dealer, and five dollars per annum for each branch retail operation or business of such retail fish dealer: *Provided*, That this section shall not apply to businesses primarily engaged in serving food fish or shellfish for consumption on the business premises. [1955 c 12 § 75.28.310. Prior: 1953 c 207 § 3; 1949 c 112 § 72(2); Rem. Supp. 1949 § 5780-510(2).]

75.28.320 Fish canner's license. A fish canning license is required for any business in the state engaged in the canning of food fish and shellfish, for commercial purposes, in hermetically sealed containers which are processed by exposure to heat for pasteurization or sterilization, and the fee for said license is thirty-seven dollars and fifty cents per annum. [1955 c 12 § 75.28.320. Prior: 1951 c 271 § 29; 1949 c 112 § 72(3); Rem. Supp. 1949 § 5780-510(3).]

Steam boilers and pressure vessels, construction, installation, inspection and certification: Chapter 70.79 RCW.

75.28.325 Custom canning license—Container markings—Commingling prohibited. A person engaged in canning for hire shellfish or food fish taken by

others for their personal use is engaged in the business of custom canning for personal use and shall pay a license fee of thirty-seven dollars and fifty cents per annum: *Provided*, That each and every can or container used in canning or preserving personal use caught fish or shellfish have been embossed in a permanent and legible manner on the lid or cover thereof the words "Personal Use Only—Not for Sale." It shall be unlawful to commingle personal use caught fish or shellfish at any time prior to or during the period of canning or processing. [1955 c 12 § 75.28.325. Prior: 1953 c 207 § 4.]

75.28.330 Fish byproducts license. A fish byproducts license is required for any business in the state engaged in the manufacture or preparation for commercial purposes of fertilizer, oil, meal, caviar, fish bait, or other byproducts from fish or shellfish and the fee for said license is thirty-seven dollars and fifty cents per annum. [1955 c 12 § 75.28.330. Prior: 1951 c 271 § 30; 1949 c 112 § 72(4); Rem. Supp. 1949 § 5780-510(4).]

75.28.350 Fish buyer's license. A fish buyer's license shall be obtained by every wholesaler, canner, byproducts manufacturer, or broker for each and every fish buyer engaged as a representative in the state for such wholesaler, canner, byproducts manufacturer or broker, and the fee for said license is seven dollars and fifty cents per annum.

The term "fish buyer" as used in this section means a buyer who purchases at a place or places other than his employer's business premises, and who buys for only one person. In the event the buyer buys for two or more persons, he shall be deemed a wholesale fish dealer and shall be required to be licensed as such. [1965 ex.s. c 29 § 1; 1955 c 12 § 75.28.350. Prior: 1951 c 271 § 31; 1949 c 112 § 72(6); Rem. Supp. 1949 § 5780-510(6).]

75.28.360 Boat house operator's license. A boat house operator's license is required for any business engaged in the renting of boats to individuals for the purpose of taking or catching food fish or shellfish and the fee for said license is twenty-five dollars per annum, plus one dollar for each boat used by the boat house operator in the operation of his business. [1955 c 12 § 75.28.360. Prior: 1951 c 271 § 32; 1949 c 112 § 72(7); Rem. Supp. 1949 § 5780-510(7).]

75.28.370 Branch plant license. A branch license is required for each branch plant in the state of any wholesale, canning, byproducts manufacturing or boat house business enterprise having more than one place of business. One such place shall be designated as headquarters and said license shall be obtained for each and every other place of business or branch plant. The fee for said license is seven dollars and fifty cents per annum. [1955 c 12 § 75.28.370. Prior: 1953 c 207 § 15; 1951 c 271 § 33; 1949 c 112 § 72(8); Rem. Supp. 1949 § 5780-510(8).]

75.28.375 Certain license fees double for nonresidents. The fees for all licenses prescribed in *this act shall be double for nonresidents of the state. [1971 ex.s. c 283 § 12.]

***Reviser's note:** "this act" [1971 ex.s. c 283] consists of this section and RCW 75.28.081, and to the 1971 amendments to RCW 75.12.010, 75.18.080, 75.28.012, 75.28.013, 75.28.060, 75.28.085, 75.28.087, 75.28.095, 75.28.130, 75.28.140, 75.28.190 and 75.28.220.

75.28.380 Forfeiture of license for violations. Upon conviction of any person of a violation of any provision of this title, or rule or regulation of the director, the judge or justice of the peace may, in addition to the penalty imposed by law, forfeit the license of such person: *Provided*, That upon conviction of any person of a violation of any statute or regulation prescribing the length, depth or construction of fishing gear, or upon subsequent conviction of any person of any violation of any other provisions of this title or rule or regulation of the director, the forfeiture of such license shall be mandatory, and the license shall remain forfeited pending any appeal. The director may prohibit the issuance of a license to any person convicted two or more times of any such violation or prescribe the conditions under which the license may be issued. [1957 c 171 § 5; 1955 c 12 § 75.28.380. Prior: 1949 c 112 § 77; Rem. Supp. 1949 § 5780-603.]

75.28.390 Commercial herring fishing—Legislative finding. The legislature finds that a significant commercial herring fishing industry is presently developing in the state of Washington under the careful guidance of the department of fisheries. The legislature further finds that the stocks of herring within the waters of this state are limited in extent and are in need of strict preservation. [1973 1st ex.s. c 173 § 1.]

75.28.400 Commercial herring fishing—Additional finding—Purpose. In addition, the legislature finds that the number of commercial fishermen engaged in fishing for herring has steadily increased. This factor, combined with advances made in fishing and marketing techniques, has resulted in strong pressures on the supply of herring, unnecessary waste in one of Washington's valuable resources, and economic loss to the citizens of this state. Therefore, it is the purpose of RCW 75.28.390 through 75.28.430 to establish reasonable procedures for controlling the extent of commercial herring fishing. [1973 1st ex.s. c 173 § 2.]

75.28.410 Commercial herring fishing—Validation of licenses required. After April 25, 1973, only those persons who have obtained a validated license to fish for herring issued by the department of fisheries of the state of Washington shall engage in the commercial taking or catching of herring. Licenses issued under this section shall be valid for one year, from January 1 through December 31. Any food fish license as stipulated in chapter 75.28 RCW intended for use in fishing for herring in the Puget Sound district must be validated for these species by the department of fisheries after proving compliance with the provisions of RCW 75.28.420. [1973 1st ex.s. c 173 § 3.]

75.28.420 Commercial herring fishing—Validated licenses—Limitation—Required—Additional licenses. For the 1973 season and subsequent seasons, the department shall limit the number of licenses validated under RCW 75.28.410 to those individuals who held valid commercial fishing licenses and can prove that they landed herring as documented by a Washington department of fisheries landing ticket for that type of fishing gear during the period (1) January 1, 1971, through April 15, 1973, or (2) January 1, 1969, through December 31, 1970, for only those individuals who were in the armed services of the United States during the period January 1, 1971, through April 1, 1973. The validated herring license shall be required for commercial herring fishing in Puget Sound as set forth in the Washington Administrative Code under section 220-16-210. Additional licenses may be granted after the 1976 season by the department only upon a showing that the stocks of herring will not be jeopardized by the granting of such additional licenses. The individual validation to fish for herring shall be fully transferable. [1974 1st ex.s. c 104 § 1; 1973 1st ex.s. c 173 § 4.]

75.28.430 Commercial herring fishing—Elimination of units as alternative measure. If subsequent court action requires that additional validated licenses must be permitted for the 1973 season and if such increases in a particular gear result in placing an excessive strain on herring stocks, the department shall reduce the number of validated licenses for such gear by eliminating units with the shortest history of landings as established and documented by Washington department of fisheries' landing tickets for the herring fishery. If two or more units have a similar history of landings, then such reduction for those vessels shall be by lot. [1973 1st ex.s. c 173 § 5.]

75.28.440 Commercial herring fishing—Advisory committee—Hardship cases. On and after February 16, 1974 the director of the department of fisheries shall appoint three persons broadly representative of the commercial herring fishery to function as an advisory committee to the department for the purpose of defining hardship cases as such cases relate to denials of commercial herring licenses under this chapter. The committee shall hold meetings and hearings and take such testimony as it deems necessary to carry out the duty imposed on it by this section. Upon making its final decision on the meaning of a hardship case and communicating the same in writing to the director the committee shall be dissolved. The director, upon receipt of the committee's findings, may promulgate the committee's definition of a hardship case as a rule and regulation of the department after complying with the provisions of chapter 34.04 RCW, the administrative procedure act. [1974 1st ex.s. c 104 § 2.]

75.28.450 Limitation upon salmon licenses and delivery permits—Intention. The legislature finds that the protection, welfare, and economic good of the commercial salmon fishing industry is of paramount importance to the people of this state. Scientific advancement has

increased the efficiency of salmon fishing gear. There presently exists an overabundance of commercial salmon fishing gear in our state waters which causes great pressure on the salmon fishery resource. This situation results in great economic waste to the state and prohibits conservation programs from achieving their goals. The public welfare requires that the number of commercial salmon fishing licenses and vessel delivery permits issued by the state be limited to insure that sound conservation programs can be scientifically carried out. It is the intention of the legislature to preserve this valuable natural resource so that our food supplies from such resource can continue to meet the ever increasing demands placed on it by the people of this state. [1974 1st ex.s. c 184 § 1.]

Severability—1974 1st ex.s. c 184: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 1st ex.s. c 184 § 11.]

Expiration date—1974 1st ex.s. c 184 §§ 1-9: "The provisions of sections 1 through 9 of this act shall expire on December 31, 1977, and shall be null and void and without any further force and effect on such date without any further action by the legislature." [1974 1st ex.s. c 184 § 12.]

75.28.455 Limitation upon salmon licenses and delivery permits—Program to limit commercial salmon vessels—Qualifications for licensing. On and after May 6, 1974, the department of fisheries of the state of Washington shall initiate a program to limit the number of commercial salmon vessels for each type of fishing gear and area by issuing licenses and vessel delivery permits to fish for salmon only to those vessels holding such licenses or permits in any year between January 1, 1970 and May 6, 1974: *Provided*, That only those vessels which held commercial gear fishing licenses or vessel delivery permits valid for salmon during such period and can prove by means of a valid fish receiving document that salmon were caught and landed during such period shall be entitled to a valid commercial fishing license or vessel delivery permit to fish for or possess salmon for the same type of gear and area for each year of a period extending from January 1, 1975 through December 31, 1977: *Provided, however*, That nothing herein shall be construed to be contrary to the provisions of Title 75 RCW or any regulation promulgated thereunder. All such licenses or vessel delivery permits shall be transferable. [1974 1st ex.s. c 184 § 2.]

Severability—Expiration date—1974 1st ex.s. c 184: See notes following RCW 75.28.450.

75.28.460 Limitation upon salmon licenses and delivery permits—Salmon caught outside state waters—Single delivery permit—Fee. Any commercial salmon fishing vessel not qualified for a commercial salmon fishing license or vessel delivery permit under RCW 75.28.455 and wishing to land salmon caught outside the territorial waters of the state of Washington shall be able to obtain a single delivery vessel delivery permit. The fee for such permit shall be the same as the annual vessel delivery permits. [1974 1st ex.s. c 184 § 3.]

Severability—Expiration date—1974 1st ex.s. c 184: See notes following RCW 75.28.450.

75.28.465 Limitation upon salmon licenses and delivery permits—Vessels under construction. In addition to the commercial salmon fishing licenses and vessel delivery permits issued pursuant to RCW 75.28.455 the department shall issue the required license to any commercial fishing vessel which is under construction or purchased in good faith between April 16, 1973, and May 6, 1974. [1974 1st ex.s. c 184 § 4.]

Severability—Expiration date—1974 1st ex.s. c 184: See notes following RCW 75.28.450.

75.28.470 Limitation upon salmon licenses and delivery permits—Licensing of charter fishing vessels. Charter fishing vessels may be licensed for commercial trolling during the salmon trolling season if the director finds that the charter industry in this state is suffering economic hardship due to a national or state fuel crisis. [1974 1st ex.s. c 184 § 6.]

Severability—Expiration date—1974 1st ex.s. c 184: See notes following RCW 75.28.450.

75.28.475 Limitation upon salmon licenses and delivery permits—Advisory boards of review. The director shall appoint three man advisory boards of review to hear cases as provided for in RCW 75.28.480. The members of such a review board shall be from the commercial salmon fishing industry, shall serve without pay, and shall serve at the discretion of the director of the department of fisheries. The members of such a review board shall be reimbursed for subsistence and travel expenses pursuant to RCW 43.03.050 and 43.03.060 for each day or major portion thereof spent in the performance of their duty. The director shall promulgate regulations concerning the operation of such review boards in accordance with chapter 34.04 RCW. [1974 1st ex.s. c 184 § 7.]

Severability—Expiration date—1974 1st ex.s. c 184: See notes following RCW 75.28.450.

75.28.480 Limitation upon salmon licenses and delivery permits—Appeal to board of review—Hearing—Procedure. Any person aggrieved by a decision of the department pursuant to RCW 75.28.455 through 75.28.475 may voluntarily request that a board of review be impaneled to hear his case. Such a hearing before a board shall be informal and the rules of evidence shall not be applicable to the proceedings and a record shall be kept thereof as provided by chapter 34.04 RCW. After the presentation of a case such a review board shall inform in writing both the director and the initiating party of whether or not the board agrees or disagrees with the department's decision and the reasons for such agreement or disagreement. Upon receipt of the board's findings the director, at his discretion, may either uphold or reverse the department's action.

Nothing in this section shall be construed: (1) to impair an aggrieved person's right to proceed under chapter 34.04 RCW; or (2) to impose any liability on members of a review board for their actions pursuant to this section. [1974 1st ex.s. c 184 § 9.]

Severability—Expiration date—1974 1st ex.s. c 184: See notes following RCW 75.28.450.

75.28.485 Limitation upon salmon licenses and delivery permits—Evaluation—Recommendations. On and after May 6, 1974 the department of fisheries in cooperation with representatives of the commercial salmon fishing industry shall continually evaluate the provisions of RCW 75.28.450 through 75.28.470 and recommend to the legislature prior to January 1, 1977, a phase II approach to limit gear entry into this state's commercial salmon fisheries. [1974 1st ex.s. c 184 § 10.]

Severability—Expiration date—1974 1st ex.s. c 184: See notes following RCW 75.28.450.

Chapter 75.32

PRIVILEGE AND CATCH FEES ON FOOD FISH AND SHELLFISH

Sections	
75.32.001	"Primary market value" defined.
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75.32.110	Director may make rules, etc., to insure payment of fees.
75.32.120	Penalty for violations.
75.32.130	Director may require bond after wilful violation—License revocation for failure.

75.32.001 "Primary market value" defined. "Primary market value" as used in this chapter means the ex-vessel price paid by the purchasers of food fish and shellfish to the seller at the point where ownership or title to the food fish or shellfish passes. [1965 ex.s. c 71 § 1.]

75.32.020 Privilege fees required. In addition to all other taxes, licenses or fees provided by law there shall be paid to the state of Washington by those engaged in the fishing industry in this state the privilege fees as provided for in this chapter. [1955 c 12 § 75.32.020. Prior: 1949 c 107 § 1, part; Rem. Supp. 1949 § 5780-60, part.]

75.32.030 Canners, processors, dealers—Privilege fees. Canners, curers, freezers, wholesale dealers and retail dealers of food fish and shellfish, other than oysters, and manufacturers of food fish and shellfish by-products, other than oyster byproducts, shall pay a privilege fee equal to two percent of the primary market value on all fresh or frozen chinook and silver salmon which they receive, handle, deal in, or deal with as original receiver in the state, and they shall pay a privilege fee equal to one percent of the primary market value on all other fresh or frozen food fish and shellfish or part thereof, except oysters, which they receive, handle, deal in or deal with, as original receiver in the state: *Provided*, That any person or sales agency selling fresh or frozen food fish or shellfish previously landed in the state to others residing outside the state of

Washington, shall be responsible for and shall pay the privilege taxes herein provided. [1963 ex.s. c 10 § 1; 1955 c 212 § 12; 1955 c 12 § 75.32.030. Prior: 1953 c 207 § 6; 1951 c 271 § 34; 1949 c 107 § 1(1); Rem. Supp. 1949 § 5780-60(1).]

75.32.051 Oyster canners, processors, dealers—Privilege fee. Canners, curers, freezers, wholesale dealers and retail dealers of oysters, and manufacturers of oyster byproducts, shall pay a privilege fee equal to one cent per gallon or bushel on Pacific oysters, and six and one-half cents per gallon or bushel on Olympia oysters, New Washington oysters or Kumamoto oysters which they receive, handle, deal in or deal with as original receiver in this state: *Provided*, That any person or sales agency selling fresh or frozen oysters previously taken in the state to others residing outside the state of Washington, shall be responsible for and shall pay the privilege taxes herein provided. [1955 c 212 § 13.]

75.32.070 Catch fees required—Exception—Privilege, catch, fees when Oregon fees already paid. A catch fee shall be paid by every person taking food fish or shellfish, or parts thereof, from the waters or beaches of this state for commercial purposes, and the fee shall be equal to two percent of the primary market value of all fresh or frozen chinook and silver salmon so taken, and one percent of the primary market value of all other species of food fish and shellfish, or parts thereof: *Provided*, That catch taxes shall not be paid by those taking shellfish from licensed oyster or clam farms or by those taking food fish or shellfish, or parts thereof, from fish farms licensed pursuant to RCW 75.16.110: *Provided further*, That it is not the intent of the state of Washington to collect privilege fees or catch fees on fish and shellfish previously landed from the Columbia River district in Oregon, on which privilege fees have already been paid, and which are transshipped to this state. An official certification of payment of Oregon privilege fees must be furnished the Washington department of fisheries in these instances. [1973 1st ex.s. c 63 § 1; 1963 ex.s. c 10 § 2; 1955 c 12 § 75.32.070. Prior: 1951 c 271 § 35; 1949 c 107 § 1(5), part; Rem. Supp. 1949 § 5780-60(5), part.]

75.32.080 Payment of catch fees—"Original receiver" defined—Responsibility for privilege taxes. The catch fees provided for herein shall be deducted from the payments made by the original receiver to the person catching or landing the food fish or shellfish, and the original receiver shall collect the fees and remit them to the director, and in event he fails to do so he is liable for such fees as he fails to collect and remit.

"Original receiver" means the person first receiving, handling, dealing in, or dealing with the fresh or frozen fish or shellfish within the state of Washington as a canner, curer, freezer, retail dealer, wholesale dealer, byproducts manufacturer, or branch plant; and the privilege fees provided for herein shall be paid on all fresh or frozen food fish or shellfish handled by the original receivers regardless of where the fish or shellfish were caught: *Provided*, That no tax shall be paid on

frozen food fish or frozen shellfish that has been previously landed in another state, territory, or country: *Provided further*, That any person or sales agency selling fresh or frozen food fish or shellfish previously landed in the state to others residing outside the state of Washington, shall be responsible for and shall pay the privilege taxes herein provided. [1955 c 12 § 75.32.080. Prior: 1953 c 207 § 8; 1951 c 271 § 36; 1949 c 107 § 1(5), part; Rem. Supp. 1949 § 5780-60(5), part.]

75.32.090 Payment of privilege or catch fees—When due—Returns. The privilege or catch fees herein provided for are due and payable in quarterly installments, and the fees accruing during each quarterly period shall become due on the first day of the month immediately following the end of the quarterly period, and shall be paid on or before the last day of that month. The following shall constitute the quarterly periods to be utilized:

- (1) January, February, March;
- (2) April, May, June;
- (3) July, August, September;
- (4) October, November, December.

On or before the day payment is required as provided above, the person paying the privilege or catch fees shall prepare a return under oath upon such forms and setting forth such information as the director may require, and transmit the same to the director together with a remittance for the fees which are due. Any person that is subject at any time of the year to the privilege or catch fee provisions set forth in this chapter shall file a return each quarter whether or not any fees are due. [1967 c 193 § 1; 1963 ex.s. c 9 § 1; 1955 c 12 § 75.32.090. Prior: 1949 c 107 § 2; Rem. Supp. 1949 § 5780-61.]

75.32.101 Delinquent payments—Penalties—Interest—Lien—Date of filing governed by postmark. In the event payment of fees provided for under this chapter is not received by the fifteenth day of the month in which the fees become due, the fees shall become delinquent and the schedule of penalties stated below shall be invoked. A return or remittance which is transmitted to the director by United States mail shall be deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it. The following shall be the schedule of penalties to be assessed for delinquent payments of such fees:

- (1) Sixteen through thirty days after due date—Add ten percent of total fees due but not less than one dollar.
- (2) Thirty-one through sixty days after due date—Add twenty percent of total fees due but not less than two dollars.
- (3) Sixty-one through ninety days after due date—Add twenty-five percent of total fees due but not less than three dollars.
- (4) Ninety-one days or more after due date—Add twenty-five percent of total fees due (but not less than three dollars) plus eight percent interest per annum

computed on the sum of the total fees due and the percentage penalty.

The delinquent fees together with the applicable penalties and accrued interest thereon shall constitute a first lien upon the cannery, packing plant, buildings, scows, boats, vehicles and other equipment used by the person or business owing the fees in the taking, handling, dealing in, dealing with, or processing of food fish or shellfish. [1963 ex.s. c 9 § 2.]

75.32.110 Director may make rules, etc., to insure payment of fees. The director shall have the authority to promulgate such rules, regulations, and orders, and to require such reports as in his judgment shall be necessary to insure the payment of the fees herein required. [1955 c 12 § 75.32.110. Prior: 1949 c 107 § 4; Rem. Supp. 1949 § 5780-63.]

75.32.120 Penalty for violations. In event any person wilfully violates the provisions of this chapter, or any of the rules, regulations, or orders of the director made pursuant to this chapter, he is guilty of a gross misdemeanor and subject to a fine, or imprisonment, or both. [1955 c 12 § 75.32.120. Prior: 1949 c 107 § 5; Rem. Supp. 1949 § 5780-64.]

75.32.130 Director may require bond after wilful violation—License revocation for failure. In event any person wilfully violates any of the provisions of this chapter or the rules, regulations, and orders of the director made pursuant to the provisions of this chapter, the director shall have the authority to require such person to post a bond, in an amount not to exceed five thousand dollars, conditioned upon his faithful performance of the provisions of the chapter and the rules, regulations, and orders of the director made pursuant to this chapter, and in event such person fails to post such a bond within thirty days after the same is demanded by the director, the director shall forthwith cancel and revoke any license or licenses to engage in the fishing industry that such person was theretofore issued by the state of Washington. [1955 c 12 § 75.32.130. Prior: 1949 c 107 § 6; Rem. Supp. 1949 § 5780-65.]

Chapter 75.36

SEIZURE AND FORFEITURE OF PROPERTY FOR VIOLATIONS

Sections

- 75.36.010 Seizure of property without warrant—Where authorized—Deposit of cash bond in lieu.
 75.36.020 Forfeiture may be in addition to other penalties.
 75.36.030 Service of process and forfeiture where identity of violator not known.
 75.36.040 Concurrent jurisdiction of justice and superior courts.
 75.36.050 Sale or destruction of property forfeited—Disposition of proceeds.

75.36.010 Seizure of property without warrant—Where authorized—Deposit of cash bond in lieu. The director, fisheries inspectors, deputy fisheries inspectors, and ex officio fisheries inspectors may seize without warrant all food fish, shellfish, or parts thereof taken, killed, transported, or possessed contrary to law or rule

or regulation of the director and may seize in a similar manner any boat, vehicle, gear, appliance, or other device used in violation of the fisheries code or the regulations of the director, or held with intent to violate the fisheries code or the regulations of the director, and the articles seized shall be forfeited to the state, regardless of the ownership of the articles seized: *Provided*, That the owner of the boat, vehicle, gear, appliance, or other device so seized may recover the same by depositing into court a cash bond equal to the value of the seized articles if the value of the same be less than five thousand dollars, or a cash bond in the amount of five thousand dollars, if the value of the seized boat, vehicle, gear, appliance, or other device be in excess of five thousand dollars, and the cash bond shall thereafter be subject to forfeiture to the state in lieu of the seized boat, vehicle, gear, appliance, or other device. [1955 c 12 § 75.36.010. Prior: 1949 c 112 § 76(1); Rem. Supp. 1949 § 5780-602(1).]

75.36.020 Forfeiture may be in addition to other penalties. The court shall have the power and jurisdiction in any prosecution for violation of the fisheries code or regulations of the director, in addition to imposing any penalty provided by law, to order forfeited to the state any articles seized under the provisions of this chapter. [1955 c 12 § 75.36.020. Prior: 1949 c 112 § 76(2); Rem. Supp. 1949 § 5780-602(2).]

75.36.030 Service of process and forfeiture where identity of violator not known. In event it appears upon affidavit that the identity of the person responsible for the violation for which the seizure was made, is unknown or that for any reason the state is unable to prosecute the person responsible for the violation for which the seizure was made, the court nevertheless shall have the power and jurisdiction to forfeit such articles so seized upon a hearing duly held after service of summons describing the articles seized and giving notice of pending forfeiture by publication in the manner provided by law for the service of summons in civil actions. [1955 c 12 § 75.36.030. Prior: 1949 c 112 § 76(3); Rem. Supp. 1949 § 5780-602(3).]

75.36.040 Concurrent jurisdiction of justice and superior courts. Justice courts and superior courts shall have concurrent jurisdiction to order the forfeitures provided for in this chapter. [1955 c 12 § 75.36.040. Prior: 1949 c 112 § 76(4); Rem. Supp. 1949 § 5780-602(4).]

75.36.050 Sale or destruction of property forfeited—Disposition of proceeds. In the event of seizure and forfeiture of any articles as provided in this chapter, the director may sell or destroy all or any of such articles at public auction. The time, place, and manner of holding such sale shall be within the discretion of the director. Notice of the time and place of any such sale shall be published once a week for at least two consecutive weeks in advance of such sale, in at least one newspaper of general circulation in the county wherein the sale is to be held.

The proceeds from all such sales shall be deposited with the state treasurer to credit of the general fund. [1955 c 12 § 75.36.050. Prior: 1951 c 271 § 38; 1949 c 112 § 76(5); Rem. Supp. 1949 § 5780-602(5).]

**Chapter 75.40
COMPACTS**

- Sections
- 75.40.010 Compact with Oregon as to Columbia River fisheries authorized.
- 75.40.020 Director to represent state in changing Columbia River fishing seasons.
- 75.40.030 Pacific Marine Fisheries Compact—Provisions.
- 75.40.040 Representatives of this state on Pacific fisheries commission.
- 75.40.050 Offshore fishing in Pacific—Rules and regulations.
- 75.40.060 Fraser River sockeye salmon fishery—Adoption, enforcement of convention authorized.
- 75.40.070 Penalty for violation of rules and regulations.

75.40.010 Compact with Oregon as to Columbia River fisheries authorized. Should congress by virtue of the authority vested in it under Article I, section 10, of the Constitution of the United States, providing for compacts and agreements between states, ratify the recommendations of the conference committees of the states of Washington and Oregon, appointed to agree on legislation necessary for the regulation, preservation and protection of fish in the waters of the Columbia River, or its tributaries, over which said states have concurrent jurisdiction, or which would be affected by said concurrent jurisdiction, said recommendation being as follows: "We further recommend that a resolution be passed by the legislatures of Washington and Oregon, whereby the ratification by Congress of the laws of the states of Washington and Oregon shall act as a treaty between said states, subject to modification only by joint agreement by said states"; and said recommendation having been approved by resolution adopting the report of the conference committee, then, and in that event, there shall exist between the states of Washington and Oregon a definite compact and agreement, the purport of which shall be substantially as follows:

All laws and regulations now existing or which may be necessary for regulating, protecting or preserving fish in the waters of the Columbia River, or its tributaries, over which the states of Washington and Oregon have concurrent jurisdiction, or which would be affected by said concurrent jurisdiction, shall be made, changed, altered and amended in whole or in part, only with the mutual consent and approbation of both states. [1955 c 12 § 75.40.010. Prior: 1949 c 112 § 80; Rem. Supp. 1949 § 5780-701.]

75.40.020 Director to represent state in changing Columbia River fishing seasons. The director is hereby authorized for and on behalf of the state of Washington to give to the state of Oregon such consent and approbation of the state of Washington as is necessary under and pursuant to the compact entered into between the states of Washington and Oregon, as set out in RCW 75.40.010, to change the open and closed seasons in the

Columbia River district as permitted in this chapter. [1955 c 12 § 75.40.020. Prior: 1949 c 112 § 81; Rem. Supp. 1949 § 5780-702.]

75.40.030 Pacific Marine Fisheries Compact—Provisions. Should congress, by virtue of the authority vested in it under Article I, section 10, of the Constitution of the United States, providing for compacts and agreements between the states, ratify The Pacific Marine Fisheries Compact after the enactment of this compact by the states of Alaska, California, Idaho, Oregon and Washington, then, and in that event, there shall exist between the contracting states a definite compact and agreement, the purport of which shall be substantially as follows:

THE PACIFIC MARINE FISHERIES COMPACT

The contracting states do hereby agree as follows:

ARTICLE I.

The purposes of this compact are and shall be to promote the better utilization of fisheries, marine, shell and anadromous, which are of mutual concern, and to develop a joint program of protection and prevention of physical waste of such fisheries in all of those areas of the Pacific Ocean and adjacent waters over which the compacting states jointly or separately now have or may hereafter acquire jurisdiction.

Nothing herein contained shall be construed so as to authorize the compacting states or any of them to limit the production of fish or fish products for the purpose of establishing or fixing the prices thereof or creating and perpetuating a monopoly.

ARTICLE II.

This agreement shall become operative immediately as to those states executing it whenever the compacting states have executed it in the form that is in accordance with the laws of the executing states and the congress has given its consent.

ARTICLE III.

Each state joining herein shall appoint, as determined by state statutes, one or more representatives to a commission hereby constituted and designated as The Pacific Marine Fisheries Commission, of whom one shall be the administrative or other officer of the agency of such state charged with the conservation of the fisheries resources to which this compact pertains. This commission shall be a body with the powers and duties set forth herein.

The term of each commissioner of The Pacific Marine Fisheries Commission shall be four years. A commissioner shall hold office until his successor shall be appointed and qualified but such successor's term shall expire four years from legal date of expiration of the term of his predecessor. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled for the unexpired term, or a commissioner may be removed from office, as provided by the statutes of the state concerned. Each commissioner may delegate in writing from time to time to a deputy the power

to be present and participate, including voting as his representative or substitute, at any meeting of or hearing by or other proceeding of the commission.

Voting powers under this compact shall be limited to one vote for each state regardless of the number of representatives.

ARTICLE IV.

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell, and anadromous in all of those areas of the Pacific Ocean over which the states signatory to this compact jointly or separately now have or may hereafter acquire jurisdiction. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions and said conservation zones to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the signatory parties hereto.

To that end the commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the governors and legislative branches of the various signatory states hereto legislation dealing with the conservation of the marine, shell and anadromous fisheries in all of those areas of the Pacific Ocean and adjacent waters over which the signatory states jointly or separately now have or may hereafter acquire jurisdiction. The commission shall, more than one month prior to any regular meeting of the legislative branch in any state signatory hereto, present to the governor of such state its recommendations relating to enactments by the legislative branch of that state in furthering the intents and purposes of this compact.

The commission shall consult with and advise the pertinent administrative agencies in the signatory states with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable and which lie within the jurisdiction of such agencies.

The commission shall have power to recommend to the states signatory hereto the stocking of the waters of such states with marine, shell, or anadromous fish and fish eggs or joint stocking by some or all of such states and when two or more of the said states shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

ARTICLE V.

The commission shall elect from its number a chairman and a vice chairman and shall appoint and at its pleasure, remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the

conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place within the territorial limits of the signatory states but must meet at least once a year.

ARTICLE VI.

No action shall be taken by the commission except by the affirmative vote of a majority of the whole number of compacting states represented at any meeting. No recommendation shall be made by the commission in regard to any species of fish except by the vote of a majority of the compacting states which have an interest in such species.

ARTICLE VII.

The fisheries research agencies of the signatory states shall act in collaboration as the official research agency of The Pacific Marine Fisheries Commission.

An advisory committee to be representative of the commercial fishermen, commercial fishing industry and such other interests of each state as the commission deems advisable shall be established by the commission as soon as practicable for the purpose of advising the commission upon such recommendations as it may desire to make.

ARTICLE VIII.

Nothing in this compact shall be construed to limit the powers of any state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any state imposing additional conditions and restrictions to conserve its fisheries.

ARTICLE IX.

Continued absence of representation or of any representative on the commission from any state party hereto, shall be brought to the attention of the governor thereof.

ARTICLE X.

The states agree to make available annual funds for the support of the commission on the following basis:

Eighty percent of the annual budget shall be shared equally by those member states having as a boundary the Pacific Ocean; not less than five percent of the annual budget shall be contributed by any other member state; the balance of the annual budget shall be shared by those member states, having as a boundary the Pacific Ocean, in proportion to the primary market value of the products of their commercial fisheries on the basis of the latest five-year catch records.

The annual contribution of each member state shall be figured to the nearest one hundred dollars.

This amended article shall become effective upon its enactment by the states of Alaska, California, Idaho, Oregon, and Washington and upon ratification by congress by virtue of the authority vested in it under Article I, section 10 of the Constitution of the United States.

ARTICLE XI.

This compact shall continue in force and remain binding upon each state until renounced by it. Renunciation of this compact must be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other parties hereto.

ARTICLE XII.

The states of Alaska or Hawaii, or any state having rivers or streams tributary to the Pacific Ocean may become a contracting state by enactment of The Pacific Marine Fisheries Compact. Upon admission of any new state to the compact, the purposes of the compact and the duties of the commission shall extend to the development of joint programs for the conservation, protection and prevention of physical waste of fisheries in which the contracting states are mutually concerned and to all waters of the newly admitted state necessary to develop such programs.

This article shall become effective upon its enactment by the states of Alaska, California, Idaho, Oregon and Washington and upon ratification by congress by virtue of the authority vested in it under Article I, section 10, of the Constitution of the United States. [1969 ex.s. c 101 § 2; 1959 ex.s. c 7 § 1; 1955 c 12 § 75.40.030. Prior: 1949 c 112 § 82(1); Rem. Supp. 1949 § 5780-703(1).]

Reviser's note: The 24th annual report (1971 p 40) of the Pacific Marine Fisheries Compact commission indicates congressional approval effective July 10, 1970 by P.L. 91-315, 91st congress; 84 Stat. 415.

Effective date—1969 ex.s. c 101: "The provisions of this 1969 amendatory act shall not take effect until such time as the proposed amendment to The Pacific Marine Fisheries Compact contained herein is approved by the congress of the United States." [1969 ex.s. c 101 § 1.] This applies to RCW 75.40.030.

75.40.040 Representatives of this state on Pacific fisheries commission. In the event the compact set forth in RCW 75.40.030 becomes effective, the director of fisheries, ex officio, and two appointees of the governor representing the fishing industry or an industry allied therewith, shall act as the representatives of this state on the Pacific Marine Fisheries Commission, in accordance with the provisions of, and with the powers and duties provided in the compact. The appointees of the governor shall be subject to confirmation by the state senate. [1963 c 171 § 2; 1955 c 12 § 75.40.040. Prior: 1949 c 112 § 82(2); Rem. Supp. 1949 § 5780-703(2).]

75.40.050 Offshore fishing in Pacific—Rules and regulations. In the event the compact set forth in RCW 75.40.030 becomes effective, the director shall have the power and he is hereby authorized from time to time to make, adopt, amend and promulgate, governing offshore fishing in the Pacific Ocean by citizens of this state, rules and regulations, prohibiting wastage of food or shellfish, establishing open and closed season for all fishing, designating areas open or closed to fishing, setting minimum and maximum sizes of fish and shellfish that may be taken, declaring the kinds of food or shellfish that may be used for bait, and regulating fishing gear to be used as to mesh, size and length of nets and number, length and size of line and hooks: *Provided,*

That no rule or regulation shall be issued governing the conduct of citizens of this state unless like rules or regulations or statutes have been made or will become effective jointly as to the citizens of the states of Oregon and California. [1955 c 12 § 75.40.050. Prior: 1949 c 112 § 82(3); Rem. Supp. 1949 § 5780-703(3).]

75.40.060 Fraser River sockeye salmon fishery—Adoption, enforcement of convention authorized. The director and his duly authorized agents are hereby authorized to adopt and to enforce the provisions of the convention between the United States and the Dominion of Canada for the protection, preservation and extension of the sockeye salmon fishery of the Fraser River system, signed at Washington, District of Columbia, on the twenty-sixth day of May, 1930, and the regulations of the commission promulgated under authority of said convention. [1955 c 12 § 75.40.060. Prior: 1949 c 112 § 83; Rem. Supp. 1949 § 5780-704.]

75.40.070 Penalty for violation of rules and regulations. Any person violating any of the rules or regulations of the director issued in accordance with this chapter, shall be guilty of a misdemeanor. [1955 c 12 § 75.40.070. Prior: 1949 c 112 § 82(4); Rem. Supp. 1949 § 5780-703(4).]

Chapter 75.98 CONSTRUCTION

Sections

75.98.010	Continuation of existing law.
75.98.020	Title, chapter, section headings not part of law.
75.98.030	Invalidity of part of title not to affect remainder.
75.98.040	Construction of certain sections.
75.98.050	Repeals and savings.
75.98.060	Emergency—1955 c 12.

75.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1955 c 12 § 75.98.010.]

75.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1955 c 12 § 75.98.020.]

75.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1955 c 12 § 75.98.030.]

75.98.040 Construction of certain sections. Nothing in RCW *43.25.010, 43.25.045, 43.25.047, 75.08.025, 75.28.020, 75.28.030, 75.28.080, 75.28.195, 75.28.310, 75.28.325, 75.28.370, 75.32.030, and 75.32.080 shall be construed to restrict or impair the authority of the director of fisheries consistent with and pursuant to the provisions thereof from issuing and publishing such

regulations as, after investigation, he may deem necessary to administer said sections and to effectuate their purposes, or to administer and effectuate all other acts governing or affecting the department of fisheries, nor shall anything herein be construed to restrict or impair the authority of the director to issue and publish regulations he may find necessary under the provisions of the Pacific marine fisheries compact. [1955 c 12 § 75.98.040.]

***Reviser's note:** RCW "43.25.010, 43.25.045, 43.25.047," have been redesignated as 75.08.014, 75.08.203 and 75.08.206, respectively.

Severability—1955: "The several provisions of this act are hereby declared to be separate and severable and if any clause, sentence, paragraph, subdivision, section or part thereof shall, for any reason, be adjudged invalid, or the applicability thereof to any person, circumstance or product adjudged invalid, such judgment shall not affect, impair or invalidate the remainder of the act, and the applicability thereof to other persons, circumstances or products shall not thereby be affected, but such judgment, if any, shall be confined in its operation to the particular clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered." [(i) 1955 c 212 § 15. (ii) 1955 c 276 § 5.] This applies to RCW 75.08.040, 75.12.140, 75.12.150, 75.12.160, 75.24.090, 75.28.040, 75.28.060, 75.28.090, 75.28.255, 75.28.280, 75.28.281, 75.28.282, 75.28.300, 75.32.030 and 75.32.051.

75.98.050 Repeals and savings. The following acts or parts of acts are repealed:

- (1) Chapter 9, Laws of 1949;
- (2) Chapter 107, Laws of 1949;
- (3) Chapter 99, Laws of 1949;
- (4) Sections 1, 2, 6, 7, 8, 10, 13 through 23, and 25 through 87, chapter 112, Laws of 1949;
- (5) Sections 1 through 38, 42 through 45, and 47 through 49, chapter 271, Laws of 1951;
- (6) Chapter 7, Laws of 1951, 1st extraordinary session;
- (7) Chapter 147, Laws of 1953;
- (8) Sections I through 9, 11, and 15 through 18, chapter 207, Laws of 1953.

Such repeals shall not be construed as affecting any existing right acquired under the provisions of the statutes repealed, nor any rule, regulation or order adopted pursuant thereto, nor as affecting any proceeding instituted thereunder. [1955 c 12 § 75.98.050.]

75.98.060 Emergency—1955 c 12. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1955 c 12 § 75.98.060.]

TITLE 76

FORESTS AND FOREST PRODUCTS

Chapters

- 76.01 General provisions.
- 76.04 Forest protection.
- 76.06 Forest insect and disease control.
- 76.09 Forest practices.
- 76.10 Surface mining.
- 76.12 Reforestation.
- 76.14 Forest rehabilitation.
- 76.16 Access to state timber and other valuable material.
- 76.20 Firewood on state lands.
- 76.24 Toll logging roads.
- 76.28 Boom companies.
- 76.32 Log driving companies.
- 76.36 Marks and brands.
- 76.40 Log patrols.
- 76.42 Wood debris—Removal from navigable waters.
- 76.44 Institute of forest products.
- 76.48 Specialized forest products.

Reviser's note: The powers and duties of most of the public agencies mentioned in Title 76 RCW have been transferred, at least in part, to the department of natural resources, see chapter 43.30 RCW (chapter 38, Laws of 1957). The purpose of said chapter, as provided in RCW 43.30.010, is "to provide for more effective and efficient management of the forest and land resources in the state by consolidating into a department of natural resources certain powers, duties and functions of the division of forestry of the department of conservation and development, the board of state land commissioners, the state forest board, all state sustained yield forest committees, director of conservation and development, state capitol committee, director of licenses, secretary of state, tax commission and commissioner of public lands."

The division of forestry of the department of conservation and development, the board of state land commissioners, the state forest board and the state sustained yield forest committees were abolished in 1957; see RCW 43.30.070 (1957 c 38 § 7).

The state board of forest commissioners and the state forester and fire warden were abolished in 1921 and their powers and duties were transferred to the division of forestry of the department of conservation and development (see (1) 1921 c 7 §§ 1, 61, 62, 67 and 135; (2) 1921 c 64 § 3; and (3) 1921 c 102 § 4); thence to the department of natural resources as above indicated.

Access roads to public and state forest lands: Chapter 79.38 RCW.

Cascar a bark peeling: Chapter 19.08 RCW.

Christmas tree exporting: Chapter 19.12 RCW.

County timber: Chapter 36.34 RCW.

Easements over public lands: RCW 79.01.312 through 79.01.336 and 79.36.230 through 79.36.290.

Exchange of lands to facilitate marketing of forest products or to consolidate state lands: RCW 79.08.180 through 79.08.200.

Excise tax on conveyance of standing timber: Chapter 28A.45 RCW.

Fireworks: Chapter 70.77 RCW.

Forest management, major line at state universities: RCW 28B.10.115, 28B.20.060.

Forest roads, county: RCW 36.82.140.

Health and safety in factories, mills and workshops: Chapter 49.20 RCW.

Labor liens: Title 60 RCW.

Lien for labor and services on timber and lumber: Chapter 60.24 RCW.

Limitation on liability of forest landowner for injuries to recreation users: RCW 4.24.210.

Logging railroads: Title 81 RCW.

Logging trucks, special permits for use of roads and highways: RCW 46.44.047.

Logs on county highways and bridges: RCW 36.86.090.

Measurement of timber and wood products, fraud, penalty: RCW 9.45.122–9.45.126.

Motor vehicle size, weight and load: Chapter 46.44 RCW.

National forests jurisdiction: Chapter 37.08 RCW. proceeds of sales of and earnings from to current state school fund: RCW 28A.41.030.

Pest control compact: Chapter 17.34 RCW.

Public lands: Title 79 RCW.

Reservation of timber on sale of county tax–title lands: RCW 84.64-.270 through 84.64.290.

Safety and extrahazardous employment: Chapter 49.16 RCW.

Safety supervisor: RCW 43.22.040.

State division of agriculture: Chapter 43.23 RCW.

Sustained yield plan and cooperative agreements: Chapters 79.56 and 79.60 RCW.

Taxation and/or assessment of lands lying both within fire protection district and forest protection assessment area: RCW 52.16.170.

Taxation of reforestation lands: Chapter 84.28 RCW.

Transportation of forest products, applicability of public utility tax: RCW 82.16.020.

University demonstration forest and experiment station: RCW 79.08.070.

Washington pesticide application act; applicability of to forest lands: RCW 17.21.210.

Weather modification and control: Chapter 43.27A RCW.

Workmen's compensation: Title 51 RCW.

Chapter 76.01 GENERAL PROVISIONS

Sections

- 76.01.010 Sale of other than state forest lands.
- 76.01.020 Sale of other than state forest lands—Procedure.
- 76.01.030 Sale of other than state forest lands—Disposition of revenue.
- 76.01.040 Federal funds for management and protection of forests, forest and range lands.
- 76.01.050 Federal funds for management and protection of forests, forest and range lands—Disbursement of funds.
- 76.01.060 Right of entry in course of duty by representatives of department of natural resources.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see note following Title 76 RCW digest.

76.01.010 Sale of other than state forest lands. The director of conservation and development with the approval of the state forestry board is hereby authorized to sell any real property not designated or acquired as state forest lands, but acquired by the state, either in the name of the forest board, the forestry board, or the division of forestry, for administrative sites, lien foreclosures or other purposes whenever he shall determine that said lands are no longer or not necessary for public use. [1955 c 121 § 1.]

76.01.020 Sale of other than state forest lands—Procedure. The sale may be made after public notice to the highest bidder for such a price as shall be approved by the governor, but not less than the fair market value of the real property, plus the value of improvements thereon. Any instruments necessary to convey title shall be executed by the governor in form approved by the attorney general. [1955 c 121 § 2.]

76.01.030 Sale of other than state forest lands—Disposition of revenue. All amounts received from the sale shall be credited to the fund of the department of government responsible for the acquisition and maintenance of the property sold. [1955 c 121 § 3.]

76.01.040 Federal funds for management and protection of forests, forest and range lands. The division of forestry of the department of conservation and development upon the approval of the director of the department of conservation and development, is hereby authorized to receive funds from the federal government for cooperative work in management and protection of forests and forest and range lands as may be authorized by any act of Congress which is now, or may hereafter be, adopted for such purposes. [1957 c 78 § 1.]

76.01.050 Federal funds for management and protection of forests, forest and range lands—Disbursement of funds. The division of forestry is hereby authorized to disburse such funds, together with any funds which may be appropriated or contributed from any source for such purposes, on management and protection of forests and forest and range lands. [1957 c 78 § 2.]

76.01.060 Right of entry in course of duty by representatives of department of natural resources. Any authorized assistants, employees, agents, appointees or representatives of the department of natural resources may, in the course of their inspection and enforcement duties as provided for in chapters 76.04, 76.06, 76.08, 76.16, 76.36 and 76.40 RCW, enter upon any lands, real estate, waters or premises except the dwelling house or appurtenant buildings in this state whether public or private and remain thereon while performing such duties. Similar entry by the department of natural resources may be made for the purpose of making examinations, locations, surveys and/or appraisals of all lands under the management and jurisdiction of the department of natural resources; or for making examinations, appraisals and, after five days' written notice to

the landowner, making surveys for the purpose of possible acquisition of property to provide public access to public lands. In no event other than an emergency such as fire fighting shall motor vehicles be used to cross a field customarily cultivated, without prior consent of the owner. None of the entries herein provided for shall constitute trespass, but nothing contained herein shall limit or diminish any liability which would otherwise exist as a result of the acts or omissions of said department or its representatives. [1971 ex.s. c 49 § 1; 1963 c 100 § 1.]

Chapter 76.04 FOREST PROTECTION

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76.04.360	Fire patrol assessments—Lien—Supervisor's bond (as amended by 1973 1st ex.s. c 195 § 87).

- 76.04.370 Additional fire hazards—Extreme fire hazard areas—Abatement, isolation or reduction—Summary action—Recovery of costs.
- 76.04.380 Uncontrolled fire a public nuisance—Suppression—Duties—Summary action—Recovery of costs.
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- 76.04.490 Clarke-McNary fund.
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- 76.04.510 General contingency forest fire suppression account.
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Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see note following Title 76 RCW digest.

Board of state land commissioners abolished: RCW 43.30.070.

Burning permits within fire protection districts: RCW 52.28.010.

Christmas trees—Cutting, breaking, removing: RCW 79.40.070 and 79.40.080.

Excessive steam in boilers, penalty: RCW 70.54.080.

Killing person by reckless operation of vessel or boiler: RCW 9.48.120.

Logging railroads: Title 81 RCW.

Pest control compact: Chapter 17.34 RCW.

Steam boilers and pressure vessels, construction, installation, inspection and certification: Chapter 70.79 RCW.

Treble damages for removal of trees: RCW 64.12.030 and 79.01.756.

76.04.010 Definitions. As used in this chapter:

"Additional fire hazard" means a condition of forest land resulting from the existence of forest debris so located and in such amounts and flammability as to readily support, intensify and/or continue the spread of fire beyond the spread that would occur in the absence of such debris or if the debris had been abated in a manner approved by the department of natural resources;

"Department" means the department of natural resources or its authorized representatives;

"Director" means the director of conservation and development as that term occurred in pre-1957 law and means the department in all subsequent law;

"Supervisor" means the supervisor of forestry as that term occurred in pre-1957 law and means the department in all subsequent law;

"Emergency fire costs" means those costs incurred or approved by the department for emergency forest fire suppression, including the employment of men, rental of equipment, and purchase of supplies over and above

costs regularly budgeted and provided for nonemergency fire expenses for the biennium in which such costs occur;

"Forest debris" includes forest slashing, chopping, and any other vegetative residue resulting from activities on forest land;

"Forest fire service" includes all wardens, rangers, and other help employed especially for preventing or fighting forest fires;

"Forest land" means any land which has enough timber, standing or down, or flammable material, to constitute in the judgment of the department a fire menace to life or property: *Provided*, That sagebrush and grass areas east of the summit of the Cascade mountains are not included unless such areas are adjacent to or intermingled with areas supporting tree growth;

"Forest landowner" means the owner or the person in possession of any public or private forest land defined in this section;

"Forest material" means forest slashing, chopping, woodland, or brushland;

"Landowner operation" means every activity, and supporting activities, of a forest landowner, his agents, employees, or independent contractors or permittees therewith in the management and use of forest land for the primary benefit of the owner. Such activities may include, but are not limited to, the growing and harvesting of forest products, development of transportation systems, utilization of mineral or other natural resources, disposing of forest debris, and the clearing of land: *Provided*, That recreational and/or residential activities not associated with the above shall not be included;

"Participating landowner" means an owner of forest land, which land is subject to the forest patrol assessment provided in RCW 76.04.360 as now or hereafter amended, including publicly owned forest land paying a like amount in lieu thereof;

"Suppression" means all activities involved in the containment and control of forest fires, including the patrolling thereof until such fires are extinguished or deemed by the department of natural resources to pose no further threat to life or property. [1971 ex.s. c 207 § 1; 1951 c 58 § 1. Prior: (i) 1911 c 125 § 1; RRS § 5781. (ii) 1911 c 125 § 4, part; RRS § 5784, part. (iii) 1917 c 105 § 6; RRS § 5809.]

Reviser's note: Compare the definition of "Forest fire service" in this section with the definition in RCW 76.04.050.

Construction—1971 ex.s. c 207: "Nothing in this 1971 amendatory act shall be construed to repeal, affect, or limit either directly, indirectly, or by implication any claims or liability for costs incurred by the department or others prior to the effective date of this 1971 amendatory act." [1971 ex.s. c 207 § 18.] This applies to RCW 76.04.385, 76.04.515, 76.04.520, to the 1971 amendments to RCW 76.04.010, 76.04.180, 76.04.310, 76.04.360, 76.04.370, 76.04.380, 76.04.390, 76.04.510, 76.08.010, 76.08.050, 76.08.060, and to the repeal of RCW 76.04.040 and 76.04.230.

Severability—1951 c 58: "If any section, subdivision, sentence or clause in this act shall be held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of the act." [1951 c 58 § 11.]

76.04.020 General duties of director. The board shall supervise all matters of forest policy and forest management under the jurisdiction of the state, and shall have power to authorize all needful and proper expenditures for forest protection; it shall have full power to appoint a forester; to make rules and regulations for the prevention, control and suppression of forest fires as it deems necessary; to regulate and control the official acts of the forester, his assistants, the wardens, and the rangers, and to remove at will any of these officials. It shall be the duty of the board to collect information regarding the timber lands owned by the state, through investigation made by the forester, his assistants, the wardens and the rangers regarding the condition of the timber lands belonging to the state, the investigation to include any damage caused by forest fires, and any illegal cutting, or trespassing upon the state timber lands.

The board is hereby authorized, when in its judgment it appears advisable, to accept on behalf of the state, any grant of land within the state, which shall then become a part of the state forests: *Provided*, That no grant shall be accepted until the title has been examined and approved by the attorney general of the state and a report made to the board of the result of such examination. [1911 c 125 § 2; RRS § 5782. Prior: 1905 c 164 § 2; 1903 c 114 § 5.]

Reviser's note: "board" refers to the state board of forest commissioners; "forester" refers to the state forester and fire warden. Both the "board" and "forester" were abolished by 1921 c 7 § 135. Their powers and duties have devolved upon the department of natural resources through a chain of statutes as follows:

(1) 1905 c 164 §§ 1-3; (2) 1921 c 7 §§ 1, 61, 62, 67; (3) 1921 c 102 § 4; (4) 1957 c 87 §§ 1, 3, 7, 8 (RCW 43.30.010, 43.30.030, 43.30.070 and 43.30.080).

76.04.030 Transfer of powers and duties—Federal funds. The director of conservation and development, through and by means of the division of forestry, shall, upon his appointment, qualification and assumption of the duties of his office, exercise all the powers and perform all the duties vested in, and required by *this act to be performed by either the state forester and fire warden or the state board of forest commissioners. The director of conservation and development shall have the power and authority and it shall be his duty to receive, and disburse through and by means of the division of forestry, any and all moneys contributed, allotted or paid by the United States under the authority of any act of congress for use in cooperation with the state of Washington in protecting and developing forests. [1921 c 102 § 4 (adding a new section to 1911 c 125, section 23); RRS § 5802.]

Reviser's note: (1) For further devolution of the powers and duties referred to herein see note following Title 76 RCW digest.

(2) *this act" first appears in 1921 c 102 § 4 adding a new section to 1911 c 125 which latter act as amended is codified as RCW 76.04-.010, 76.04.020, 76.04.040 through 76.04.090, 76.04.110, 76.04.130, 76.04.150, 76.04.180, 76.04.200, 76.04.210, 76.04.250 through 76.04.270, 76.04.280, 76.04.310 and 76.04.320.

76.04.050 Duties of supervisor—Forest assistants. The forester may at his discretion, subject to the approval of the board, appoint trained forest assistants, possessing technical qualifications, and may employ

necessary clerical assistants, and fix the amount of their respective salaries, which shall be payable in equal monthly installments to each assistant so appointed or employed.

He shall act as secretary of the board, or he may delegate that duty to one of his assistants. He shall, acting under the supervision of the board, and whenever he may deem it necessary to the best interests of the state, cooperate in forest surveys, in forest studies, in forest products studies, in forest fire fighting and patrol, and in the preparation of plans for the protection, management, replacement of trees, wood lots, and timber tracts, with any of the several departments of the governments of other states, and with the government or with the departments of the government of the United States with the Dominion of Canada, or with any province thereof, and with counties, towns, corporations, and individuals within the state of Washington.

He shall, subject to the rules and regulations of the board, have direct charge and supervision of all matters pertaining to forestry, including the forest fire service of the state.

The term "forest fire service" as used in *this act shall be held to include all wardens, rangers and help especially employed for preventing or fighting forest fires.

In times of emergency or unusual danger the forester is empowered to mass the forest fire service of the state where its presence might be required by reason of forest fires, and to take charge of, and direct the work of suppressing such fires.

The forester shall enforce all laws for the preservation of the forests within the state, investigate the origin of all forest fires, vigorously prosecute all violators of *this act; prepare and print for public distribution an abstract of the forest laws and the forest fire laws of Washington, together with such rules and regulations as may be formulated by the board.

The forester may, with the approval of the board, publish for free distribution, information pertaining to forestry, and to forest products, which he may consider of benefit to the people of the state.

It shall be the duty of the forester to annually notify the county clerk in each county where wardens or rangers are appointed, giving the names of such appointees.

The forester shall furnish notices printed in large letters on cloth, calling attention to the dangers from forest fires, and to the penalties for the violation of *this act; such notices to be posted in conspicuous places by the wardens or rangers in all timbered districts along roads and trails, streams and lakes, frequented by tourists, campers, hunters and fishermen, and in other visited regions.

The forester shall, subject to the approval of the board, prepare all necessary printed forms for use of wardens and rangers, in connection with the granting of applications for permits to burn; for the appointment of wardens and rangers, and any and all forms or blanks required or desirable, and shall supply each warden and ranger with such forms and blanks.

The forester shall become familiar with the location and the areas of all state timbered and cut-over lands, and shall prepare maps of each of the timbered counties showing the state land therein, and supply such maps to each warden, and in all ways that are practical and feasible protect such lands from the dangers of fire, trespass, and the illegal cutting of timber, reporting from time to time direct to the board such information as may be of benefit to the state in the care and protection of its timber.

It shall be the duty of the forester to institute inquiry into the extent, kind, value and condition of all timber lands within the state; the amount of acres, and the value of the timber that is cut and removed each year, to determine what state lands are chiefly valuable for growing timber; the extent to which timber lands are being destroyed by fire; and also to examine into the production, quality and quantity of second growth timber, with a view to ascertaining conditions for reforestation, and not later than the first day of December of each year, make a written report to the board upon all such tracts so examined by him, together with detailed information as to the work of the forest fire service of the state. [1911 c 125 § 4; RRS § 5784. Prior: 1905 c 164 § 4; 1903 c 114 § 8. Formerly RCW 76.04.010, part, and 76.04.050.]

Reviser's note: (1) The 1941 Code Committee divided and codified this section as RCW 76.04.050 and 76.04.010 which latter section was subsequently amended by 1951 c 58 § 1. In particular the definition of "forest fire service" contained herein should be compared with the definition in RCW 76.04.010.

(2) *"this act", see note following RCW 76.04.030.

(3) "board", "forester", see note following RCW 76.04.020.

76.04.060 Wardens—Appointment—Duties—Compensation. The state supervisor of forestry shall, subject to the approval of the director of the department of conservation and development, have power to appoint within any region or district in this state where there is timber requiring protection, one or more wardens for all or any portion of the period during which the said supervisor deems that forest fire dangers exist.

The said supervisor may, subject to the approval of the said director, and at such times and in such localities as he deems the public welfare demands, employ one or more wardens whose duty it shall be to examine deforested lands of the state, and ascertain if such lands are chiefly valuable for agriculture, or if they are chiefly valuable for timber growing, with a view to reforestation. The said wardens, shall, under the direction of the said supervisor engage in the discovery of inflammable materials, and cause, or assist in the burning of such material at such times as the burning can be done with a minimum of danger to adjacent timber, or other property. The said wardens, under the direction of the said supervisor, shall report any trespass and illegal cutting upon state timber lands, coming to his notice, and report the same to the state land commissioner.

The said supervisor shall have power to temporarily suspend any warden or ranger who may be incompetent or unwilling to discharge properly the duties of his office, and to appoint his successor temporarily, until his action shall be passed upon by the said director.

The wardens shall make their headquarters at such place as the said supervisor shall determine, and upon request of said supervisor to the county commissioners of any county, such wardens shall be furnished with suitably equipped office quarters in the county court house, said quarters to be designated by said county commissioners.

The authority of the wardens respecting the prevention, suppression and control of forest fires, summoning, impressing or employing help, or making arrests for the violation of *this act, may extend to any part of the state.

The salaries and necessary expenses of all wardens, together with all wages and expenses incurred for help and assistance in forest fire protection shall be fixed by the said director, the wages and salaries to be based on but not to exceed going wages and salaries for similar work.

All accounts of the wardens shall be submitted to the said supervisor, as well as all bills for forest fire protection authorized by the wardens.

All wardens and rangers shall render reports to the said supervisor on such blanks or forms, or in such manner, and at such times as may be ordered, giving a summary of how employed, the area of county visited, expenses incurred, and such other information as may be called for by the said supervisor. [1937 c 97 § 1; 1923 c 184 § 2; 1921 c 102 § 1; 1911 c 125 § 5; RRS § 5785. Prior: 1905 c 164 § 5.]

***Reviser's note:** "this act", see note following RCW 76.04.030.

76.04.070 Further duties of wardens. Each warden shall be at all times under the direction and control of the supervisor of forestry, and shall perform such other duties at such times and places as he may direct.

It shall be the duty of wardens to post over the forest areas notices of warning giving the date of the closed season as provided for in RCW 76.04.150, and copies of all such laws and rules as they may be directed to post by the supervisor of forestry.

They shall investigate all fires and report all of a serious or threatening character to the supervisor of forestry immediately. They shall patrol their districts; visit all parts of roads and trails, and frequented places and camps as far as possible, warn campers or other users of fire, see that all locomotives are provided with spark arresters, and with adequate devices for preventing the escape of fire or live coals from ash pans and fire boxes, in accordance with the law; extinguish small or smoldering fires, and set back-fires to control fires; summon, impress and employ help in controlling fires, and see that all laws for the protection of forests are enforced, and arrest and cause to be prosecuted all offenders. [1933 c 68 § 1; 1911 c 125 § 6; RRS § 5786. Prior: 1905 c 164 § 6.]

76.04.080 Rangers—Appointment—Ex officio rangers—Compensation. All state land cruisers, all game wardens, road supervisors and state highway patrolmen, when approved by the state supervisor of forestry, and all rangers and assistant rangers of the United States forest service, when recommended by

their forest supervisors, and commissioned by the state supervisor of forestry shall be ex officio rangers.

Timber cruisers and citizens of the state advantageously located may, at the discretion of the said supervisor, be appointed rangers and vested with the powers and duties of wardens.

Rangers shall receive no compensation for their services except when employed in cooperation with the state and under the provisions of *this act, and shall not create any indebtedness, or incur any liability on behalf of the state: *Provided*, That rangers actually engaged in extinguishing, or preventing the spread of fire in brush, slashings, choppings, timber or elsewhere that may endanger timber or other property, shall when their accounts for such service have been approved by the fire wardens in authority, be entitled to receive compensation for such services at a rate to be fixed by the director of the department of conservation and development. [1925 ex.s. c 43 § 2; 1923 c 184 § 3; 1917 c 33 § 1; 1911 c 125 § 7; RRS § 5787. Prior: 1905 c 164 § 7.]

***Reviser's note:** "this act", see note following RCW 76.04.030.

76.04.090 Duty of prosecuting attorney—Magistrate—Penalties. Whenever an arrest shall have been made for a violation of any of the provisions of *this act or whenever information of such violation shall have been lodged with him, the prosecuting attorney of the county in which the criminal act was committed, shall prosecute the offender or offenders, with all diligence and energy. If any prosecuting attorney shall fail to comply with the provisions of this section, he shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, and by imprisonment of not less than thirty days, nor more than one year in the county jail. The penalties of this section shall apply to any magistrate, with proper authority, who refuses or neglects to cause the arrest and prosecution of any person or persons when complaint under oath of violation of any provisions of this act has been lodged with him. [1911 c 125 § 20; RRS § 5800. Prior: 1905 c 164 § 11.]

***Reviser's note:** "this act", see note following RCW 76.04.030.

76.04.100 Service of notices. Any notice required by *this or other acts to be served by a forest officer shall be sufficient if a written or printed copy thereof is delivered, mailed or telegraphed by a forest officer to the person to receive notice or to his responsible agent, or, in case the name or address of such person or agent is unknown to the officers and cannot be obtained by reasonable diligence, by posting such copy in a conspicuous place upon the premises concerned by this notice. [1917 c 105 § 7; RRS § 5810.]

***Reviser's note:** "this act" appears in 1917 c 105 codified as RCW 76.04.010, 76.04.100, 76.04.350 through 76.04.380 and 76.04.400.

76.04.110 Arrests without warrant. The forester, his assistants, wardens, rangers, and all police officers are hereby empowered to make arrests without warrant of persons violating *this act. [1911 c 125 § 19; RRS § 5799.]

***Reviser's note:** (1) "this act", see note following RCW 76.04.030. (2) "forester", see note following RCW 76.04.020.

76.04.120 Rules and regulations—Penalty for violations. Any person who shall wilfully violate any of the orders, rules or regulations made by the director of the department of conservation and development of the state of Washington in accordance with the authority granted by the provisions of Title XXXVI of Remington's Compiled Statutes of Washington 1922, for the protection of forests from fires, shall be guilty of a misdemeanor. [1923 c 184 § 11, part; RRS § 5811-1.]

Reviser's note: Title XXXVI Rem. Comp. Stat. (1911 c 125, 1891 p 226 § 1, and 1917 c 105) is codified in chapter 76.04 RCW.

76.04.130 Disposition of fines. All fines collected under *this act shall be paid into the county treasury of the county in which the offense was committed: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1969 ex.s. c 199 § 32; 1911 c 125 § 21; RRS § 5801.]

***Reviser's note:** "this act", see note following RCW 76.04.030.

Disposition of fines generally: Chapter 10.82 RCW.

76.04.140 Regions of extra fire hazard—Designation—Penalty. When, in the opinion of the director, any forest region is particularly exposed to fire danger, he may designate such region, defining the boundaries thereof by legal subdivisions or watercourses, watersheds, mountain ranges, or other natural monuments, as a region of extra fire hazard, and he shall promulgate rules and regulations for the protection thereof. All such rules and regulations shall be promulgated by publication in such newspapers of general circulation in the counties wherein such region is situated and for such length of time as the director may determine. When in the opinion of the director it becomes necessary to close the area to entry, posters carrying the wording "Region of extra fire hazard—CLOSED TO ENTRY—except as provided by RCW 76.04.140" and indicating the beginning and ending dates of such closures shall be posted on the public highways entering such regions. The rules and regulations shall be in force from the time specified therein: *Provided*, That when in the opinion of the director such forest region continues to be exposed to fire danger, or ceases to be so exposed, the director may extend, suspend, or terminate the closure as previously promulgated by proclamation so declaring.

This chapter shall not, however, authorize the director to prohibit the conduct of industrial operations, public work, or access of permanent residents to their own property within the closed area: *Provided*, That no one legally entering the region of extra fire hazard will be permitted to use the area for recreational purposes which are prohibited to the general public under the terms of this section.

Anyone violating any such rules and regulations or order closing any forest region shall be guilty of a misdemeanor. [1957 c 111 § 4; 1953 c 24 § 1; 1925 ex.s. c 43 § 1; RRS § 5782-1.]

76.04.150 Closed season—Permits. Except in certain areas designated by the department of natural resources, or as permitted under rules and regulations promulgated by the department of natural resources, no one shall burn any inflammable material within any county in this state in which there is a warden or ranger during the period beginning the fifteenth day of March, and ending on the fifteenth day of October in each year in western Washington, or during the period beginning the fifteenth day of April and ending on the fifteenth day of October in eastern Washington, unless a different date for such beginning and ending is fixed by order of the department of natural resources, after a finding that such different dates are necessary for the protection of life and property, or air quality standards, without first obtaining permission in writing from the department of natural resources, any authorized employee thereof, or a warden, or ranger, and afterwards complying with the terms of said permit. However, if such fire is contained in a suitable device sufficient, in the opinion of the department of natural resources to prevent the fire from spreading, and such device complies with air pollution requirements as provided under chapter 70.94 RCW, said written permission will not be necessary under RCW 76.04.150 and 76.04.170.

The department of natural resources or authorized employees thereof, or any warden or ranger, may refuse, revoke, or postpone the use of permits to burn when such act is clearly necessary for the safety of adjacent property. They may also refuse, suspend, or revoke a permit authorized under this section when necessary in their judgment to prevent air pollution as provided for in chapter 70.94 RCW.

A person violating this section shall, upon conviction, be fined not less than twenty-five dollars nor more than five hundred dollars or be imprisoned in the county jail not exceeding thirty days. Permission for burning shall be given only upon compliance with such rules and regulations as the department of natural resources shall prescribe, which shall be only such as the department of natural resources deems necessary for the protection of life or property, and air quality. [1971 ex.s. c 233 § 1; 1965 c 82 § 1; 1953 c 24 § 2; 1951 c 58 § 2; 1945 c 11 § 1; 1925 ex.s. c 43 § 3; 1921 c 102 § 2; 1911 c 125 § 8; Rem. Supp. 1945 § 5788. Prior: 1905 c 164 § 8; 1903 c 114 §§ 6, 7.]

76.04.170 Burning waste forest material—Permit. Anyone desiring to dispose of the refuse or waste forest material on or from forest lands, to reduce the potential danger of loss of life or property by burning during the period beginning the fifteenth day of March, and ending on the fifteenth day of October in each year in western Washington, or during the period beginning the fifteenth day of April and ending on the fifteenth day of October in eastern Washington, unless different dates for such beginning and ending are fixed by order of the

department of natural resources after a finding that such different dates are necessary for the protection of life and property, or air quality, may make application to the department of natural resources, authorized employees thereof, or to any warden or ranger, for a permit so to do. The application shall state the location and extent of the area sought to be burned over, and by whom the burning is to be done. Upon receipt of an application the department of natural resources may inspect, or cause to be inspected the area described in the application and if satisfied that all requirements relating to fire fighting equipment, the work to be done or precautions to be taken before commencing such burning, have been complied with and that no unreasonable danger will result, and that the burning will be done at a time and in a manner so as to minimize reduction in air quality, the department of natural resources shall issue a permit.

The department of natural resources, authorized employees thereof, warden, or ranger may impose reasonable conditions in such permits for the protection of life, property, or air quality, and may suspend or revoke such permits when conditions warrant. A permit shall be effective only under the conditions and for the period stated therein. Compliance with the terms of the permit shall create a presumption of due care with respect to the starting and control of such fire. [1971 ex.s. c 233 § 2; 1955 c 142 § 1; 1929 c 207 § 1; 1927 c 223 § 1; RRS § 5788-1. Prior: 1905 c 164 § 8.]

Severability—1955 c 142: "If any section or part of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other sections or parts of this act or the application thereof, if it can be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable and independent of any other provision of law." [1955 c 142 § 15.] This applies to RCW 76.04.170, 76.04.210, 76.04.223-76.04.230, 76.04.250-76.04.270, 76.04.320 and 76.04.360.

Burning permit within fire protection districts: RCW 52.28.010.

Burning permits for abating or prevention of forest fire hazards: RCW 70.94.660-70.94.700.

76.04.180 Supervised burning—Fire fighting—Employment—Penalty for refusing assistance. No one shall burn any forest material or the waste or debris resulting from logging or land clearing operations until such work shall have been done in and around the slashing or chopping and/or the area proposed to be burned over to prevent the spread of fire therefrom as shall be required to be done by the state supervisor of forestry, or any warden or ranger. The said supervisor or any warden or ranger may require the cutting of such dry snags, stumps and dead trees within the area to be burned, which in his judgment constitute a menace or are likely to further the spread of fire therefrom.

When any person shall have obtained permission from the said supervisor, warden or ranger, to burn any slashings made for the purpose of clearing land, the warden may, at his discretion, furnish him with a man to supervise and control the burning, who shall represent and act for such warden, and shall have all the power and authority of a warden while engaged in such service, including the right to revoke such permit, if in his opinion the burning authorized would endanger any

valuable timber or other property. Such a man shall serve only until such time as the party burning may be able to keep the fire under control himself.

The said supervisor and wardens are hereby authorized and empowered to employ a sufficient number of men to extinguish or prevent the spreading of any fires that may be in danger of destroying any valuable timber or other property of the state. The said supervisor, or any warden by special authority of the said supervisor, may provide needed tools and supplies, and transportation when necessary for men so employed.

Every man so employed, and also the representative of the warden supervising the burning, shall be entitled to compensation at a rate to be fixed by the director of the department of conservation and development, and the warden shall issue a certificate to each man so employed showing the number of hours worked by him and the amounts due to him, upon which, after approval by said supervisor, the men shall be entitled to receive payment from the state.

Any person refusing to render assistance when called upon by any warden, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than ten dollars nor more than one hundred dollars. [1971 ex.s. c 207 § 13; 1929 c 207 § 3; 1923 c 184 § 5; 1917 c 33 § 2; 1911 c 125 § 9; RRS § 5789.]

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

76.04.190 Closure of forest operation—Penalty. When in the opinion of the supervisor, weather conditions arise which present an extreme fire hazard, whereby life and property may be endangered by spreading forest fires, he may issue an order shutting down all logging, land clearing, or other industrial operations which may cause a forest fire to start, and such shutdown shall be for the periods and regions, designated in the order. During all such shutdowns, all persons are excluded from logging operating areas and areas of logging slashings, except those persons present in the interest of fire protection for the period of the shutdown ordered by the state supervisor of forestry, or his authorized deputies.

Anyone violating any such order shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars for each violation, or by imprisonment for not less than thirty days in the county jail. Each day's violation shall constitute a separate offense. [1957 c 111 § 5; 1951 2nd ex.s. c 18 § 1; 1937 c 152 § 3; RRS § 5789-1.]

76.04.200 Suspension of burning permits and hunting privileges. In times and localities of unusual fire danger, the governor, with the advice of the forester, may suspend any or all permits or privileges authorized by RCW 76.04.150, and may prohibit absolutely the use of fire therein mentioned.

Whenever during an open season for the hunting of any kind of game within this state, it shall appear to the governor that by reason of extreme drought, the use of firearms or fire by hunters is liable to cause forest fires, he may by proclamation suspend the open season and

make it a closed season for the shooting of wild birds or animals of any kind, for such time as he may designate, and during the time so designated all provisions of law relating to closed seasons for game shall be enforced. [1911 c 125 § 10; RRS § 5790.]

Reviser's note: The powers and duties of the governor referred to herein have devolved upon the department of natural resources through a chain of statutes as follows: (1) 1921 c 7 §§ 1, 68; (2) 1957 c 87 §§ 3, 7, 8.

76.04.210 Penalties for setting fires or removing notices. Any person who wilfully or needlessly defaces or removes any warning notice posted under the requirements of this chapter shall upon conviction be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars for each offense, or by imprisonment in the county jail not exceeding thirty days.

Any person who upon any land sets any fire, except at the proper places on camping grounds which have been prepared and designated as such by the supervisor or which have been approved by the supervisor, which fire shall spread and damage or destroy property of any kind not his own, or who starts any fire, except in a stove, upon any designated camp ground and, upon leaving the ground, fails to extinguish the fire, shall upon conviction be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars. If the fire is set or left with intent to destroy property not his own, he shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or imprisonment in the county jail for not less than one month nor more than one year, or by both such fine and imprisonment.

During the period beginning the fifteenth day of March, and ending on the fifteenth day of October in each year in western Washington, or between the fifteenth day of April and the fifteenth day of October in eastern Washington, unless different dates for such beginning and ending are fixed by order of the supervisor of forestry after a finding that such different dates are necessary for the protection of life and property, any person who without a written permit kindles a fire, in or dangerously near any forest material, except at the proper places on camping grounds as described above, or who is a party to kindling such fire, or who by throwing away any lighted cigar, cigarette, matches, or by use of firearms, or in any other manner starts a fire in forest materials, and who fails immediately to extinguish it, shall upon conviction, be fined not less than twenty-five dollars nor more than one hundred dollars, or be imprisoned in the county jail not exceeding two months. Nothing in this section shall absolve any person from liability on account of negligence.

The supervisor shall designate and prepare or approve such camping grounds as he may determine for the purpose of carrying out the provisions of this section. [1955 c 142 § 2; 1925 ex.s. c 43 § 4; 1921 c 102 § 3; 1911 c 125 § 11; RRS § 5791. Prior: 1905 c 164 § 9; 1903 c 114 § 10.]

76.04.220 Wilful or negligent fires—Fire fighting—Refusal to aid—Penalty. Every person who shall wilfully or negligently set, or fail to carefully guard or extinguish any fire, whether on his own land or the land of another, whereby the timber or property of another shall be endangered, or who shall fail to respond to any lawful summons to aid in guarding or extinguishing any fire, shall be guilty of a misdemeanor. [1909 c 249 § 271; RRS § 2523.]

Reviser's note: Caption for 1909 c 249 § 271 reads: "Sec. 271. Negligent fires."

76.04.222 Snags must be felled currently with logging. Standing dead trees constitute the greatest single detriment to effective fire control action in the forest areas. To insure continued forest growth free from destruction by conflagration, snags must be felled currently with the logging. [1951 c 13 § 1.]

76.04.223 Size of snags—Number to be felled in snag areas. On forest lands west of the summit of the Cascade mountains, all snags or standing dead trees over twenty-five feet in height and sixteen inches and over in diameter breast high, shall be felled currently with the felling of live timber or with the current logging operation: *Provided*, That where the majority of the timber has been killed prior to logging, the operator, timber owner and/or landowner will not be required to fell more nonmerchantable snags than the average number of nonmerchantable snags per acre in green timber in the stands of the county. The average number of nonmerchantable snags per acre in green timber will be determined for the various counties of the state by the supervisor of forestry with the approval of the state forest board. [1955 c 142 § 3; 1951 c 13 § 2.]

76.04.224 Number of snags to be felled—Same ratio as green timber cut. On areas where only part of the live merchantable timber is cut and removed, the number of nonmerchantable snags to be felled shall be in the same proportion to the number of nonmerchantable snags in the stand, as the volume, Scribner scale, of green trees cut over twelve inches diameter breast high is to the total volume, Scribner scale, of green trees over twelve inches diameter breast high in the stand. [1955 c 142 § 4; 1951 c 13 § 3.]

76.04.225 Snag removal pattern. In stands wherever the operator, timber owner and/or landowner is not required to fall all the snags on the area, as provided in RCW 76.04.222 to 76.04.227, the supervisor may designate which snags shall be felled in an effort to remove the snags in patterns to establish snag-free fire breaks. [1957 c 111 § 6; 1955 c 142 § 5; 1951 c 13 § 4.]

76.04.226 Snag removal—Penalty for failure to remove—Lien. If an operator, timber owner and/or landowner shall fail to comply with the provisions of RCW 76.04.222 to 76.04.227 he shall be charged with violation of such sections, and the supervisor may subsequently have the snags felled and the cost thereof may be recovered by a lien against any property of the

violators, which lien may be enforced in the same manner and with the same effect as a mechanic's lien. [1955 c 142 § 6; 1951 c 13 § 5.]

Mechanics' lien, generally: Chapter 60.04 RCW.

76.04.227 Snag removal—Violation is misdemeanor. Any person violating the provisions of RCW 76.04.222 to 76.04.227 shall be guilty of a misdemeanor, and upon conviction be fined not less than twenty-five dollars nor more than two hundred and fifty dollars and/or be imprisoned in the county jail not exceeding thirty days. [1955 c 142 § 7; 1951 c 13 § 6.]

76.04.240 Burning mill wood waste—Arresters. It shall be unlawful for any one manufacturing lumber or shingles, or other forest products, to destroy wood waste material by burning the same at or near any mill situated within one-quarter of one mile of any forest material, without properly confining the place of said burning and without further safeguarding the surrounding property against danger from said burning by such additional devices as the forester may require.

It shall be unlawful for anyone to destroy any wood waste material by fire within any burner or destructor operated at or near any mill, and situated within one-quarter of one mile of any forest material, or to operate any power producing plant using in connection therewith any smokestack, chimney, or other spark emitting outlet, without installing and maintaining on such burner, or destructor, or on such smokestack, chimney or other spark emitting outlet, a safe and suitable device for arresting sparks.

Anyone violating the provisions of this section shall upon conviction thereof, be punished by a fine of not less than fifty dollars nor more than five hundred dollars for each and every violation, or by imprisonment of not less than thirty days in the county jail. [1911 c 125 § 13; RRS § 5793.]

76.04.242 Dumping mill waste, forest debris—Prohibited—Penalty. No person shall dump mill waste from forest products or forest debris of any kind, in quantities that the department of natural resources declares to constitute a forest fire hazard, on or threatening forest lands located in this state, without first obtaining a written permit issued by the department of natural resources on such terms and conditions determined by the department pursuant to rules and regulations enacted to protect forest lands from fire. Said permits must be obtained in addition to any and all other permits required by law. Any person who dumps such mill waste, or forest debris without a required permit, or in violation of a permit shall be guilty of a gross misdemeanor and upon conviction shall be subject to a fine of not less than two hundred fifty dollars and not more than one thousand dollars, and may further be required to remove all materials dumped in violation of *this act. [1971 ex.s. c 134 § 3.]

***Reviser's note:** "this act" [1971 ex.s. c 134] consists of this section, RCW 76.04.273 and to the 1971 amendment to RCW 76.04.251.

76.04.245 Blasting fuse regulations—Penalty. It shall be unlawful to use fuse for blasting on any area of logging slash or area of actual logging operation for the period of June fifteenth to October fifteenth. This period may be extended by the supervisor if hazardous weather conditions warrant. Any person violating the provisions of this section shall be guilty of a misdemeanor. Upon the issuance of a written permit by the supervisor or warden or ranger, fuse may be used during the closed season under the conditions specified in the permit. [1953 c 24 § 8.]

76.04.251 Steam, internal combustion or electric engines and other spark emitting equipment regulated. It shall be unlawful for anyone to operate during the closed season as defined in RCW 76.04.252, any steam, internal combustion, or electric engines, or any other spark emitting equipment or devices on any forest land or in any place where, in the opinion of the department, within reason, fire could be communicated to forest land, without first complying with the requirements as may be established by the department by rule or regulation pursuant to *this 1973 amendatory act.

The department of natural resources is authorized to promulgate rules and regulations relating to forest fire prevention and suppression preparedness, including the type, number, location and condition of fire equipment; the provision of water or other fire suppression agent, spark arresters, watchmen and/or patrols; the felling of snags; the clearing of flammable material from proximity to ignition sources; and the curtailment of operations during periods of critical fire danger. The department may further provide for reasonable reductions of requirements so promulgated where operating conditions including, but not limited to, location or weather, would justify the same. [1973 1st ex.s. c 24 § 1; 1971 ex.s. c 134 § 1; 1965 ex.s. c 12 § 2.]

***Reviser's note:** "this 1973 amendatory act" consists of amendments to RCW 76.04.251, 76.04.270, 76.04.385 and 76.04.515 and to the repeal of RCW 76.04.253–76.04.260 and 76.04.320 by 1973 1st ex.s. c 24.

Sections added—1965 ex.s. c 12: "There is added to chapter 76.04 RCW new sections to read as set forth in sections 2 through 8 of this act." [1965 ex.s. c 12 § 1.] This applies to RCW 76.04.251 through 76.04.257.

Severability—1965 ex.s. c 12: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1965 ex.s. c 12 § 11.] This applies to RCW 76.04.251 through 76.04.257, 76.04.260, 76.04.270 and to the repeal of RCW 76.04.250.

76.04.252 Closed season. The period April 15th to October 15th inclusive shall be known as the closed season, unless different dates are designated by the supervisor because of fire weather conditions prevailing. [1965 ex.s. c 12 § 3.]

76.04.270 Penalty for violations—Work stoppage notice. Every person upon receipt of written notice issued by the department that such person has or is violating any of the provisions of RCW 76.04.240, 76.04.245, 76.04.251, and 76.04.310, as amended, and/or

any rule or regulation issued by the department concerning fire prevention and fire suppression preparedness shall cease such operations until the provisions of the sections or regulation specified in such notice have been complied with. The department may specify in the notice of violation the special conditions and precautions under which the operation would be allowed to continue until the end of that working day. Any person violating the statutory provisions above referenced, and as amended, or the rules or regulations issued by the department, or the written notice provided for herein, shall upon conviction be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars. [1973 1st ex.s. c 24 § 2; 1965 ex.s. c 12 § 10; 1959 c 151 § 2; 1955 c 142 § 12. Prior: 1953 c 24 § 5; 1951 c 58 § 6; 1941 c 63 § 1, part; 1937 c 152 § 1, part; 1923 c 184 § 6, part; 1911 c 125 § 14, part; 1905 c 164 §§ 6, 10, part; Rem. Supp. 1941 § 5794, part.]

76.04.273 Unauthorized entry into sealed tool box—Penalty. Any unauthorized entry into a sealed tool box shall constitute a gross misdemeanor. [1971 ex.s. c 134 § 2.]

76.04.275 Power driven machinery—Permits. Any bona fide owner or operator of land before conducting a commercial operation in dead or down timber with power driven machinery shall be required to obtain from the supervisor of forestry a written operating permit. The provisions of this section and RCW 76.04.277 shall not apply to snag falling conducted for forest protection purposes.

To obtain such a permit the operator or owner must make a written application to the supervisor or to his authorized agent submitting a map showing the area to be logged, legal description and acreage. All permits shall expire at the end of each calendar year but shall be renewable for another year upon written application. [1953 c 18 § 1.]

76.04.277 Power driven machinery—Penalty. Every person violating RCW 76.04.275 shall be guilty of a misdemeanor and shall incur the penalties and prohibitions set forth in RCW 76.04.270. [1953 c 18 § 2.]

76.04.280 Deposit of fire or live coals. No one operating a railroad shall permit to be deposited by his, or its, employees, and no one shall deposit during the closed season, fire or live coals upon the right of way outside of the yard limits, and within one-quarter of one mile of any forest material, without such deposit of fire or live coals shall be immediately extinguished.

Anyone violating the provisions of this section respecting the deposit of fire or live coals, shall upon conviction pay a fine of not less than twenty-five dollars, nor more than one hundred dollars or be imprisoned in the county jail not exceeding thirty days.

Wardens and rangers shall report any lack of sufficient spark arresters, and any lack of adequate devices for preventing the escape of fire and live coals, as provided in *this act, to the forester, and to the prosecuting attorney of their county, and the superior court of that

county where suit is first instituted, shall have jurisdiction of the offense. [1911 c 125 § 15; RRS § 5795.]

*Reviser's note: (1) "this act", see note following RCW 76.04.030.
(2) "forester", see note following RCW 76.04.020.

76.04.290 Reports of fires by carriers. Railroad companies and other public carriers, or any person or persons, operating through forested districts, must report forthwith by telephone or telegraph any fires on or adjacent to their right of way or route, to the local fire warden or to the office of the state supervisor of forestry. [1923 c 184 § 7; RRS § 5795-1.]

76.04.300 Lighted cigars, etc.—Receptacles in conveyances—Penalty. It shall be unlawful during the closed season, from April 15th to October 15th inclusive, for any person to throw away any lighted tobacco, cigars, cigarettes, matches, fireworks, or other lighted material in any forest, brush, range, or grain areas. It shall also be unlawful during the closed season for any individual to smoke when in forest or brush areas except on roads, cleared landings, gravel pits, or any similar area free of inflammable material.

Every conveyance operated through or above forest, brush, range, or grain areas, shall be equipped in each compartment with a suitable receptacle, for the disposition of lighted tobacco, cigars, cigarettes, matches, or other inflammable material. Every person operating a public conveyance through or above forest, range, or grain areas, shall post a copy of this section in a conspicuous place within the smoking compartment of the conveyance; and every person operating a saw mill, or a logging camp in any such areas, shall post a copy of this section in a conspicuous place upon the ground or buildings of such milling or logging operation. Any person violating the provisions of this section shall be guilty of a misdemeanor. [1957 c 111 § 8; 1953 c 24 § 6; 1931 c 89 § 1; 1925 ex.s. c 43 § 5; 1923 c 184 § 7, part; RRS § 5795-2.]

76.04.310 Disposal of forest debris—Permission to allow trees to fall on another's land. Everyone clearing land or clearing right of way for railroad, public highway, private road, ditch, dike, pipe or wire line, or for any other transmission, or transportation utility right of way, shall pile and burn or dispose of by other satisfactory means, all forest debris cut thereon, as rapidly as the clearing or cutting progresses, or at such other times as the department may specify, and if during the closed season, in compliance with the law requiring burning permits.

No one clearing any land or right of way, or in cutting or logging timber for any purpose, shall fell, or permit to be felled, any trees so that they may fall on to land owned by another without first obtaining permission from such owner in addition to complying with the terms of this section for the disposal of refuse. All the terms of this section and other forest laws of the state shall be observed in all clearings of right of way or other land on behalf of the state itself or any county thereof, either directly or by contract; and, unless unavoidable emergency prevents, provision shall be

made by all officials directing such work for withholding a sufficient portion of the payment therefor until the disposal is completed, to insure the completion of the disposal in compliance with this section. [1971 ex.s. c 207 § 2; 1959 c 151 § 3; 1917 c 33 § 3; 1911 c 125 § 16; RRS § 5796.]

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

Burning permits for prevention of forest fires: RCW 70.94.660.

76.04.340 Destruction of forests—Penalty. Any person or persons who shall wilfully and deliberately set fire to any forest within the state, or in any place from which fire may be communicated to any such forest, or who shall accidentally set fire to any such forest, or to any place from which fire may be communicated to any such forest, and shall not extinguish the same or use every effort to that end, or who shall build any fire for lawful purposes or otherwise in or near any such forest, and through carelessness or neglect shall permit said fire to extend to and burn through such forest, shall be deemed guilty of a misdemeanor, and on conviction before a court of competent jurisdiction shall be punishable by fine not exceeding one thousand dollars or imprisonment not exceeding one year, or by both such fine and imprisonment. [1923 c 184 § 9; RRS § 5803.]

76.04.350 Owners to protect forests. Every owner of forest land in the state of Washington shall furnish or provide therefor, during the season of the year when there is danger of forest fires, adequate protection against the spread of fire thereon or therefrom which shall meet with the approval of the state forest board: *Provided*, That for the purposes of this section forest lands, lying in counties east of the summit of the Cascade mountains, shall be deemed to be adequately protected where patrol is furnished by the United States forest service of a standard and efficiency and seasonal duration, deemed by the state forest board to be sufficient for the proper protection of the forest land of such counties. [1941 c 168 § 2; 1917 c 105 § 1; Rem. Supp. 1941 § 5804.]

76.04.360 Fire patrol assessments—Lien—Supervisor's bond (as amended by 1973 1st ex.s. c 182 § 1). If any owner of forest land neglects or fails to provide adequate fire protection therefor as required by RCW 76.04.350, the department shall provide such protection therefor, notwithstanding the provisions of RCW 76.04.520, at a cost to the owner of not to exceed nine cents an acre per year on lands west of the summit of the Cascade mountains and seven cents an acre per year on lands east of the summit of the Cascade mountains: *Provided*, That for the calendar years 1973 and 1974 the cost to the owner for such protection shall be eighteen cents an acre per year on lands west of the summit of the Cascade mountains and fourteen cents an acre per year on lands east of the summit of the Cascade mountains. During said calendar years the legislative committees on natural resources shall study the costs of forest fire protection to determine the ratio of financial support to be borne by the state to that of the forest land owner.

The findings of the legislative committees on natural resources shall be considered when establishing the forest patrol assessment for the ensuing biennium.

For the purpose of *this act, the supervisor may divide the forest lands of the state, or any part thereof, into districts, for patrol and assessment purposes, may classify lands according to the character of timber prevailing, and the fire hazard existing, and place unprotected lands under the administration of the proper district. Such cost must

be justified by a showing of budgets on demand of twenty-five owners of forest land in the county concerned at public hearing. Any amounts paid or contracted to be paid by the supervisor of natural resources for this purpose from any funds at his disposal shall be a lien upon the property patrolled and protected, and unless reimbursed by the owner within ten days after October 1st of the year in which they were incurred, on which date the supervisor of natural resources shall be prepared to make statement thereof upon request to any forest owner whose own protection has not been previously approved by him as adequate, shall be reported by the supervisor of natural resources to the assessor of the county in which the property is situated who shall extend the amounts upon the tax rolls covering the property, or the county assessor may upon authorization from the supervisor of natural resources levy the forest patrol assessment against the amounts of unimproved land as shown in each ownership on the county assessor's records and the assessor may then segregate on his records to provide that the improved land and improvements thereon carry the millage levy designed to support the rural fire protection districts as provided for in chapter 52.04 RCW.

The amounts assessed shall be collected at the time, in the same manner, by the same procedure, and with the same penalties attached that the next general state and county taxes on the same property are collected, except that errors in assessments may be corrected at any time by the supervisor of natural resources certifying them to the treasurer of the county in which the land involved is situated. Upon the collection of such assessments the county treasurer shall transmit them to the supervisor of natural resources to be applied against expenses incurred in carrying out the provisions of this section.

The supervisor of natural resources shall include in the assessment a sum not to exceed one-half of one cent per acre, to cover the necessary and reasonable cost of office and clerical work incurred in the enforcement of these provisions. He may also expend any sums collected from owners of forest lands or received from any other source for necessary office and clerical expense in connection with the enforcement of RCW 76.04.370.

When land against which fire patrol assessments are outstanding is acquired for delinquent taxes and sold at public auction, the state shall have a prior lien on the proceeds of sale over and above the amount necessary to satisfy the county's delinquent tax judgment, and the county treasurer in case the proceeds of sale exceed the amount of the delinquent tax judgment shall forthwith remit to the supervisor of natural resources the amount of the outstanding patrol assessments.

The supervisor of natural resources shall furnish a good and sufficient surety company bond running to the state, in a sum as great as the probable amount of money annually coming into his hands under the provisions of this chapter, conditioned for the faithful performance of his duties and for a faithful accounting for all sums received and expended thereunder, which bond shall be approved by the attorney general. [1973 1st ex.s. c 182 § 1; 1971 ex.s. c 207 § 14; 1959 c 123 § 1; 1955 c 142 § 14; 1951 c 58 § 8; 1925 ex.s. c 43 § 6; 1923 c 184 § 10; 1921 c 64 § 1; 1917 c 105 § 2; RRS § 5805.]

Reviser's note: RCW 76.04.360 was amended twice during the 1973 first extraordinary session of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at the same legislative session, see RCW 1.12.025.

***Reviser's note:** "this act", see note following RCW 76.04.370.

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

Taxation of reforestation lands: Chapter 84.28 RCW.

76.04.360 Fire patrol assessments—Lien—Supervisor's bond (as amended by 1973 1st ex.s. c 195 § 87). If any owner of forest land neglects or fails to provide adequate fire protection therefor as required by RCW 76.04.350, the department shall provide such protection therefor, notwithstanding the provisions of RCW 76.04.520, at a cost to the owner of not to exceed eighteen cents an acre per year on lands west of the summit of the Cascade mountains and fourteen cents an acre per year on lands east of the summit of the Cascade mountains.

For the purpose of *this act, the supervisor may divide the forest lands of the state, or any part thereof, into districts, for patrol and assessment purposes, may classify lands according to the character of timber prevailing, and the fire hazard existing, and place unprotected lands under the administration of the proper district. Such cost must

be justified by a showing of budgets on demand of twenty-five owners of forest land in the county concerned at public hearing. Any amounts paid or contracted to be paid by the supervisor of natural resources for this purpose from any funds at his disposal shall be a lien upon the property patrolled and protected, and unless reimbursed by the owner within ten days after October 1st of the year in which they were incurred, on which date the supervisor of natural resources shall be prepared to make statement thereof upon request to any forest owner whose own protection has not been previously approved by him as adequate, shall be reported by the supervisor of natural resources to the assessor of the county in which the property is situated who shall extend the amounts upon the tax rolls covering the property, or the county assessor may upon authorization from the supervisor of natural resources levy the forest patrol assessment against the amounts of unimproved land as shown in each ownership on the county assessor's records and the assessor may then segregate on his records to provide that the improved land and improvements thereon carry the dollar rate levy designed to support the rural fire protection districts as provided for in chapter 52.04 RCW.

The amounts assessed shall be collected at the time, in the same manner, by the same procedure, and with the same penalties attached that the next general state and county taxes on the same property are collected, except that errors in assessments may be corrected at any time by the supervisor of natural resources certifying them to the treasurer of the county in which the land involved is situated. Upon the collection of such assessments the county treasurer shall transmit them to the supervisor of natural resources to be applied against expenses incurred in carrying out the provisions of this section.

The supervisor of natural resources shall include in the assessment a sum not to exceed one-half of one cent per acre, to cover the necessary and reasonable cost of office and clerical work incurred in the enforcement of these provisions. He may also expend any sums collected from owners of forest lands or received from any other source for necessary office and clerical expense in connection with the enforcement of RCW 76.04.370.

When land against which fire patrol assessments are outstanding is acquired for delinquent taxes and sold at public auction, the state shall have a prior lien on the proceeds of sale over and above the amount necessary to satisfy the county's delinquent tax judgment, and the county treasurer in case the proceeds of sale exceed the amount of the delinquent tax judgment shall forthwith remit to the supervisor of natural resources the amount of the outstanding patrol assessments.

The supervisor of natural resources shall furnish a good and sufficient surety company bond running to the state, in a sum as great as the probable amount of money annually coming into his hands under the provisions of this chapter, conditioned for the faithful performance of his duties and for a faithful accounting for all sums received and expended thereunder, which bond shall be approved by the attorney general. [1973 1st ex.s. c 195 § 87; 1971 ex.s. c 207 § 14; 1959 c 123 § 1; 1955 c 142 § 14; 1951 c 58 § 8; 1925 ex.s. c 43 § 6; 1923 c 184 § 10; 1921 c 64 § 1; 1917 c 105 § 2; RRS § 5805.]

Reviser's note: RCW 76.04.360 was amended twice during the 1973 first extraordinary session of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at the same legislative session, see RCW 1.12.025.

***Reviser's note:** "this act", see note following RCW 76.04.370.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

Taxation of reforestation lands: Chapter 84.28 RCW.

76.04.370 Additional fire hazards—Extreme fire hazard areas—Abatement, isolation or reduction—Summary action—Recovery of costs. Any land in the state covered wholly or in part by forest debris and which by reason of such condition is likely to further the spread of fire and thereby endanger life or property, shall constitute an additional fire hazard, and the owner thereof and/or the person responsible for its existence shall take reasonable measures to reduce the danger of

fire spreading from the area and may abate such hazard by burning or other satisfactory means.

Notwithstanding the above, the department shall promulgate rules and regulations defining areas of extreme fire hazard including but not limited to high risk areas such as where life or buildings may be endangered, areas adjacent to public highways, and areas of frequent public use and the owner and/or person responsible shall abate such hazard; and in addition the department may define other conditions of extreme fire hazard with a high potential for fire spreading to lands in other ownerships and may, under rules and regulations adopted after consultation with the advisory board, prescribe additional measures that shall be taken by the owner and/or person responsible to isolate and/or reduce such hazard.

If the owner or person responsible for the existence of such extreme hazard or for the existence of forest debris subject to RCW 76.04.310 as now or hereafter amended, refuses, neglects, or fails to abate, isolate or reduce the same, the department may summarily cause it to be abated, isolated, or reduced as required in *this act and twice the actual cost thereof may be recovered from the owner or person responsible therefor. Such costs shall include all salaries and expenses of men and equipment incurred therein, including those of the department. All such costs shall also be a lien upon the land enforceable in the same manner with the same effect as a mechanic's lien. The summary action may be taken only after ten days' notice in writing, which shall include a suggested method of abatement and estimated cost thereof, has been given to the owner or reputed owner of the land on which such hazard or forest debris subject to RCW 76.04.310 as now or hereafter amended exists, either by personal service or by registered or certified letter addressed to him at his last known place of residence. [1971 ex.s. c 207 § 3; 1951 c 235 § 1; 1939 c 58 § 1; 1929 c 134 § 1; 1921 c 64 § 2; 1917 c 105 § 4; RRS § 5807.]

***Reviser's note:** "this act" [1971 ex.s. c 207] consists of RCW 76.04.385, 76.04.515, 76.04.520, to the 1971 amendments to RCW 76.04.010, 76.04.180, 76.04.310, 76.04.360, 76.04.370, 76.04.380, 76.04.390, 76.04.510, 76.08.010, 76.08.050, 76.08.060, and to the repeal of RCW 76.04.040 and 76.04.230.

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

Mechanics' lien, generally: Chapter 60.04 RCW.

76.04.380 Uncontrolled fire a public nuisance—Suppression—Duties—Summary action—Recovery of costs. Any fire on or threatening any forest land burning uncontrolled and without proper action being taken to prevent its spread, notwithstanding the origin of such fire, is a public nuisance by reason of its menace to life and property. Any person engaged in any activity on such lands, having knowledge of such fire, notwithstanding the origin or subsequent spread thereof on his own or other forest lands, and/or the landowner, shall make every reasonable effort to suppress such fire and to prudently report the same to the department. If such person has not suppressed such fire, the department shall summarily suppress the fire and the cost thereof may be recovered from the owner, lessee, or

other possessor of the land and the cost of the work shall also constitute a lien upon the property or chattels under his ownership. Such lien may be filed by the department in the office of the county auditor and foreclosed in the same manner provided by law for the foreclosure of mechanics' liens. The prosecuting attorney shall bring the action to recover the cost or foreclose the lien, upon the request of the department: *Provided*, That in the absence of negligence, no costs, other than those provided in RCW 76.04.385 shall be recovered from any landowner for lands subject to the forest patrol assessment with respect to the land on which the fire burns.

When a fire occurs in a land clearing, right of way clearing, or landowner operation it shall be fought to the full limit of the available employees and equipment, and such fire fighting shall be continued with the necessary crews and equipment in such numbers as are, in the opinion of the department sufficient to suppress the fire. The fire shall not be left without a fire fighting crew or fire patrol until authority so to do has been granted in writing by the department. [1971 ex.s. c 207 § 4; 1951 c 58 § 9; 1945 c 99 § 1; 1937 c 152 § 2; 1917 c 105 § 3; Rem. Supp. 1945 § 5806.]

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

Mechanics' lien, generally: Chapter 60.04 RCW.

76.04.385 Reimbursement for costs of suppression action. Any person, firm, or corporation, public or private, obligated to take suppression action on any forest fire shall, under the provisions of this section, be entitled to reimbursement for reasonable costs incurred thereby, subject to the following:

(1) If the fire is started in the course of or as a result of a land clearing, right of way clearing, or landowner's operation, the person, firm, or corporation conducting such operation shall supply at his expense the manpower and equipment under his control and reasonably available until midnight on the day on which the fire started, after which time he shall supply, at his expense, only the manpower and equipment which were within a one-half mile radius of the point of origin of such fire, but in any case never less than five men and one suitable bulldozer, or other equipment accepted by the department as equivalent, unless, in the opinion of the department, less is needed for the purpose of suppressing the same. If he has no men or equipment within the said one-half mile he shall pay to the department the equivalent of the minimum requirement. If after midnight of the day on which the fire started, additional manpower and equipment are necessary, in the opinion of the department, he shall supply the manpower and equipment under his control outside such one-half mile radius, if reasonably available, but he shall be reimbursed for such manpower and equipment as provided herein;

(2) Where a fire, which occurred in the course of or as a result of a land clearing, right of way clearing, or landowners operation, and which fire had previously been suppressed, rekindles, the operator shall be required to supply at his expense the same manpower and

equipment which were required of him at the time of the original fire.

(3) Claims for reimbursement shall be submitted within a reasonable time to the department which shall, upon verifying the amounts therein and the necessity therefor, authorize payment at such rates as established by the department for wages and equipment rental;

(4) No reimbursement provided herein shall be allowed to a person, firm, or corporation negligently responsible for the starting or existence of any fire for which costs may be recoverable by the department pursuant to law.

Reimbursement of emergency fire costs incurred or approved by the department in suppressing a forest fire may be paid from the appropriate contingency account as provided therein. Such payment shall be without restriction to the right of the department to recover costs pursuant to the provisions of RCW 76.04.390 as now or hereafter amended or other laws but any such recovery by the department shall be returned into the account from which it was spent, less reasonable costs of collection. [1973 1st ex.s. c 24 § 3; 1971 ex.s. c 207 § 5.]

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

76.04.390 Negligent starting of fires—Permitting existence of extreme fire hazard or forest debris—Liability for costs—Recovery. Any person, firm, or corporation negligently responsible for the starting or existence of a fire which spreads on forest land, including permitting the existence of an extreme fire hazard under RCW 76.04.370, as now or hereafter amended, after failure to abate, isolate, or reduce, as required in *this 1971 amendatory act, or for the existence of forest debris subject to RCW 76.04.310 as now or hereafter amended, and which contributes to the spread of said fire, shall be liable for any expense made necessary by such negligence, incurred by the state, a municipality, or a forest protective association, in fighting such fire provided that such expense was authorized or subsequently approved by the department. The department or agency incurring such expense shall have a lien for the same against any property of said person, firm, or corporation liable as above provided by filing a claim of lien naming said person, firm, or corporation describing the property against which the lien is claimed, specifying the amount expended on the lands on which the fire fighting took place and the period during which the expenses were incurred, and signed by the claimant with post office address. No claim of lien shall be valid unless filed with the county auditor of the county in which the property sought to be charged is located within a period of ninety days after the expenses of the claimant were incurred. The claimant may recover said expenses incurred in a civil action against said person, firm, or corporation liable therefor, and shall have in addition the lien remedy above provided. Said lien may be foreclosed in the same manner as a mechanic's lien is foreclosed under the statutes of the state of Washington. [1971 ex.s. c 207 § 6; 1923 c 184 § 11, part; RRS § 5806-1.]

***Reviser's note:** "this 1971 amendatory act", see note following RCW 76.04.370.

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

Mechanics' lien, generally: Chapter 60.04 RCW.

76.04.395 Permitting spread of fire—Penalty. Any person who shall negligently suffer fire originating on his own property to spread to the property of another shall be deemed guilty of a misdemeanor. [1923 c 184 § 11, part; RRS § 5806-2. Formerly RCW 9.40.090.]

76.04.397 Cutting or destroying trees without authority—Penalty. Any person who shall go upon any lands owned by the state, or by any person, firm or corporation, without the consent of the owner thereof, and cut down, cut off, top, or destroy any tree, shall be punished by a fine equivalent to one dollar for every tree so cut down, topped, or destroyed. [1923 c 184 § 11, part; RRS § 5813-1. Formerly RCW 9.61.130.]

76.04.400 Cooperative protection. When any responsible protective agency or agencies composed of timber owners other than the state shall agree to undertake systematic forest protection in cooperation therewith and such cooperation shall appear more advantageous to the state than the maintenance of the independent system provided elsewhere by law, the state forester may, with the approval of the state board of forest commissioners, designate suitable areas to be official cooperative districts and substitute thereto whenever necessary, in place of the county wardens elsewhere provided by law, such district wardens, with such district headquarters and duties, as may be agreed upon by him and by the cooperating agencies to render such cooperation most effective. He may also cooperate in the compensation of such wardens, or in the payment of other expenses for the prevention and control of fire in such official fire districts, to such extent as the board of forest commissioners may deem equitable on behalf of the state, and claim for such payments shall be approved and paid in the manner prescribed for claims outside such cooperative districts. [1917 c 105 § 5; RRS § 5808.]

Reviser's note: "state forester", "state board of forest commissioners", see note following RCW 76.04.020.

76.04.410 Contracts for protection and development. The state supervisor of forestry shall, subject to the approval of the director of the department of conservation and development, have power, subject to the provisions hereof, to enter into contracts and undertakings with private corporations or rural fire protection districts for the protection and development of the forests or any designated forest area within the state. [1949 c 141 § 1; 1933 c 45 § 1; Rem. Supp. 1949 § 5817-1.]

Construction—1933 c 45: "This act shall be construed so as not to abrogate or supplant any of the provisions of chapter 43, Laws of the Extraordinary Session 1925 [RCW 76.04.080, 76.04.140, 76.04.150, 76.04.210, 76.04.300 and 76.04.360], or chapter 40, Laws of 1931 [chapter 84.28 RCW]." [1933 c 45 § 5.] This applies to RCW 76.04.410 through 76.04.440.

76.04.420 Corporations may contract with state. Any private corporation organized and existing under the laws of this state, or organized under the laws of any other state and legally qualified to transact business in this state, may, where its articles of incorporation or charter so provide, contract with the state supervisor of forestry for the purposes provided for in RCW 76.04.410. [1933 c 45 § 2; RRS § 5817-2.]

76.04.430 Articles of incorporation—Requirements. Before any such private corporation shall be qualified to enter into any such contract, there shall be incorporated into the articles of incorporation or charter of such corporation a provision limiting the dividends which are by law payable to the stockholders thereof and such corporation shall, out of its earnings or earned surplus, and in a manner satisfactory to the state supervisor of forestry, provide for the annual setting apart of a fund or funds to discharge any contract entered into between such corporation and the said state supervisor of forestry relating to said matters. [1933 c 45 § 3; RRS § 5817-3.]

76.04.440 Requisites of contracts. Any undertaking for the protection and development of the forests of the state under RCW 76.04.410 through 76.04.440 shall be regulated and controlled by a contract to be entered into between said qualified private corporation and the state supervisor of forestry, such contract to outline the lands involved and the conditions and details of said undertaking, including an exact specification of the amount of funds to be made available by said corporation and the time and manner of the disbursement thereof: *Provided, however,* That before entering into any such contract, the state supervisor of forestry shall be satisfied that said private corporation is financially solvent and will be able to carry out the project outlined in said contract: *And provided further,* That the state supervisor of forestry shall have charge of the project for the protection and development of the forest area described in such contract, and that any expense incurred by said state supervisor of forestry under any such contract shall be payable solely by said corporation from the fund or funds provided by it for said purposes, and that the state of Washington shall not in any event be responsible to any person, firm, company or corporation for any such indebtedness thereby created. [1933 c 45 § 4; RRS § 5817-4.]

76.04.450 Olympic peninsula area protection. All forests and timber upon all lands in the state of Washington, lying west of a line one mile west of the eastern boundary of range ten west of the Willamette Meridian and north of the north boundary line of Grays Harbor county, shall be protected and preserved from the fire hazard to which they are or may be exposed by reason of the unusual quantity of fallen timber upon such lands. It shall therefore be unlawful for any person, firm, company or corporation, their officers, agents or employees, to do or commit any act which shall expose any of the forests or timber upon such lands to the hazard of fire. [1921 c 67 § 1; RRS § 5818.]

76.04.460 Olympic peninsula area protection—Rules and regulations. The director of conservation and development through and by means of the division of forestry shall have the power and it shall be his duty to make, adopt, amend and promulgate rules and regulations for the preservation and protection of the forests and timber situated upon the lands described in RCW 76.04.450, from damage or destruction by fire. [1923 c 143 § 1; 1921 c 67 § 2; RRS § 5819.]

76.04.470 Olympic peninsula area protection—Publication of rules. All such rules and regulations or amendments thereto shall be promulgated by the director of conservation and development through and by means of the division of forestry by publication in a newspaper of general circulation published at the state capitol, and shall take effect and be in force at the times specified therein. [1923 c 143 § 2; 1921 c 67 § 3; RRS § 5820.]

76.04.480 Olympic peninsula area protection—Penalty for violation of rules. Any person violating or failing to comply with any rules or regulations of the director of conservation and development through and by means of the division of forestry, made under the provisions of *this act, shall be guilty of a misdemeanor. [1923 c 143 § 3; 1921 c 67 § 4; RRS § 5821.]

***Reviser's note:** "this act" refers to 1921 c 67 codified herein as RCW 76.04.450 through 76.04.480 and 43.21.020.

76.04.485 Olympic peninsula area protection—Appointment of agents and employees. The director of conservation and development through and by means of the division of forestry may appoint such agents or employees as he may deem necessary to properly carry out the provisions of *this act, and he may empower such agents or employees to allow claims or to do any other act which the director of conservation and development through and by means of the division of forestry is authorized by *this act to perform. [1923 c 143 § 4; 1921 c 67 § 6; RRS § 5823. Formerly RCW 43.21.020, part.]

***Reviser's note:** "this act" refers to 1921 c 67 codified herein as RCW 76.04.450 through 76.04.485.

76.04.490 Clarke–McNary fund. The division of forestry of the department of conservation and development and the Washington State University, and each of them, are hereby authorized to receive funds from the federal government in connection with cooperative work with the United States department of agriculture, authorized by sections 4 and 5 of the Clarke–McNary act of congress, approved June 7, 1924, providing for the procurement, protection and distribution of forestry seed and plants for the purpose of establishing windbreaks, shelter belts and farm wood lots and to assist the owners of farms in establishing, improving and renewing wood lots, shelter belts and windbreaks; and are authorized to disburse such funds as needed. [1939 c 68 § 1; RRS § 5823-1.]

Reviser's note: Transitional material omitted. Such material reads: "and the Director of Conservation and Development is hereby further authorized to transfer to the state college the sum of two thousand

thirteen dollars and sixty-seven cents (\$2,013.67) received by him from the Federal government under sections 4 and 5 of said Clarke-McNary Act of the Federal government during the years of 1937 and 1938."

76.04.500 Cooperative farm forestry funds. The division of forestry of the department of conservation and development and the Washington State University, upon the approval of the director of the department of conservation and development, are hereby authorized to receive funds from the federal government for cooperative work, as authorized by the cooperative farm forestry act of congress, approved May 18, 1937, for all purposes authorized by said act, and to disburse said funds in cooperation with the federal government in accordance therewith. [1939 c 68 § 2; RRS § 5823-2.]

Reviser's note: The "cooperative farm forestry act" was repealed August 25, 1950 (repeal effective June 30, 1951) by the "cooperative forest management act", chapter 781, public law 729, 64 Stat. 473 (Title 16 U.S.C.A. §§ 568c, 568d).

76.04.510 General contingency forest fire suppression account. There is created a general contingency forest fire suppression account which shall be a separate account in the general fund. The account is for the purpose of paying the emergency fire costs and expenses incurred and/or approved by the department in forest fire suppression or in reacting to any potential forest fire situation. When a determination is made that the fire started in the course of or as a result of a participating landowner operation, moneys expended from this account in the suppression of such fire shall be recovered from the landowner contingency forest fire suppression account. The department shall transmit to the state treasurer for deposit in the general contingency forest fire suppression account any moneys paid out of said account which are later recovered and said moneys may be spent for purposes set forth herein during the current biennium, without reappropriation. Interfund loans to and from this account are authorized at the then current rate of interest as determined by the state treasurer. [1971 ex.s. c 207 § 7; 1959 c 332 § 1.]

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

76.04.515 Landowner contingency forest fire suppression account. There is created a landowner contingency forest fire suppression account which shall be a separate account in the general fund. This account shall be for the purpose of paying emergency fire costs incurred or approved by the department in the suppression of forest fires. When a determination is made that the fire was started by other than a participating landowner operation, moneys expended from this account in the suppression of such fire shall be recovered from the general contingency forest fire suppression account. Moneys spent from this account shall be by appropriation. The department shall transmit to the state treasurer for deposit in the landowner contingency forest fire suppression account any moneys paid out of said account which are later recovered, less reasonable costs of recovery, which moneys may be expended for purposes

set forth herein during the current biennium, without reappropriation.

This account shall be established and renewed by a special forest fire suppression account assessment paid by participating forest landowners at rates to be established by the department, but not to exceed five cents per acre per year for such period of years as may be necessary to establish and thereafter reestablish a balance in said account of one million dollars. The assessments with respect to forest lands in western and eastern Washington may differ to equitably distribute the assessment based on emergency fire suppression cost experience necessitated by participating landowner operations. Amounts assessed for this account shall be a lien upon the forest lands with respect to which the assessment is made, and may be collected as directed by the department in the same manner as forest patrol assessments. This account shall be held by the state treasurer who is authorized to invest so much of said account as is not necessary to meet current needs. Any interest earned on moneys from said account shall be deposited in and remain a part of the account, and shall be computed as part of the same in determining the balance thereof. Interfund loans to and from this account are authorized at the then current rate of interest as determined by the state treasurer, provided that the effect of the loan is considered for purposes of determining the assessments. Payment of emergency costs from this account shall in no way restrict the right of the department to recover costs pursuant to RCW 76.04.390 as now or hereafter amended, or other laws.

When the department determines that a forest fire was started in the course of or as a result of a participating landowner operation, it shall notify the forest fire advisory board of such determination. Such determination shall be final, unless, within ninety days of such notification, the forest fire advisory board or any interested party, serves a request for a hearing before the department. Such hearing shall constitute a contested case under chapter 34.04 RCW and any appeal therefrom shall be to the superior court of Thurston county. [1973 1st ex.s. c 24 § 4; 1971 ex.s. c 207 § 8.]

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

76.04.520 Forest fire advisory board. There is hereby created a forest fire advisory board, consisting of seven members who shall represent private and public forest landowners and other interested segments of the public. The members shall be appointed by the commissioner of public lands and shall serve at his pleasure, without compensation.

The duties of the forest fire advisory board shall be strictly advisory and shall include, but not necessarily be limited to, reviewing forest fire policy and protection budgets of the department; monitoring expenditures from and recoveries for the landowner contingency forest fire suppression account; recommending appropriate assessments and allocations for establishment and replenishment of said account based upon the proportionate expenditures necessitated by participating landowner operations in western and eastern

Washington; recommending to the department appropriate rules and regulations or amendments to existing rules and regulations and reviewing nonemergency rules and regulations, affecting the protection of forest lands from fire, including reasonable alternative means or procedures for the abatement, isolation, or reduction of forest fire hazards. Except where an emergency exists, all rules and regulations as to the above shall be promulgated by the department after consultation with the forest fire advisory board. [1971 ex.s. c 207 § 9.]

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

Chapter 76.06

FOREST INSECT AND DISEASE CONTROL

Sections

76.06.010	Forest insects and tree diseases are public nuisance.
76.06.020	Definitions.
76.06.030	Administration.
76.06.040	Owner must control pests and diseases.
76.06.050	Infestation control district—Creation—Notice to owners.
76.06.060	State shall control pests and diseases if owner fails.
76.06.070	Lien for costs of control—Collection.
76.06.080	Owner complying with notice is exempt.
76.06.090	Dissolution of infestation control district.
76.06.100	Forest insect and disease control fund created.
76.06.110	Deposits and availability of fund—Balances do not revert to general fund.
76.06.120	Appropriations made available.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see note following Title 76 RCW digest.

76.06.010 Forest insects and tree diseases are public nuisance. Forest insects and forest tree diseases which threaten the permanent timber production of the forest areas of the state of Washington are hereby declared to be a public nuisance. [1951 c 233 § 1.]

76.06.020 Definitions. As used in this chapter:

"Supervisor" means the supervisor of forestry;

"Board" means the state forest board;

"Owner" means and includes individuals, partnerships, corporations and associations;

"Agent" means the recognized legal representative, representatives, agent or agents for any owner;

"Timber land" means any land on which there is a sufficient number of trees, standing or down, to constitute, in the judgment of the board, a forest insect or forest disease breeding ground of a nature to constitute a menace, injurious and dangerous to permanent forest growth in the district under consideration. [1951 c 233 § 2.]

76.06.030 Administration. This chapter shall be administered by the division of forestry under the guidance and approval of the state forest board. [1951 c 233 § 3.]

76.06.040 Owner must control pests and diseases. Every owner of timber lands, or his agent, shall make every reasonable effort to control, destroy and eradicate such forest insect pests and forest tree diseases which

threaten the existence of any stand of timber or provide for the same to be done on timber lands owned by him or under his control. In the event he fails, neglects, or is unable to accomplish such control, the action may be performed as provided for in this chapter. [1951 c 233 § 4.]

76.06.050 Infestation control district—Creation—Notice to owners. Whenever the supervisor finds timber lands threatened by infestations of forest insects or forest tree diseases, and if he finds that such infestation is of such character as to threaten destruction of timber stands, the supervisor shall with the approval of the board declare and certify an infestation control district and fix and declare the boundaries thereof, so as to definitely describe such district. Said district may include timber lands threatened by the infestation as well as those timber lands already infested.

Thereafter the supervisor shall at once serve written notice to all owners of timber lands or their agents within the said district to proceed under the provisions of this chapter without delay to control, destroy and eradicate the said forest insect pests or forest tree diseases as provided herein. The said notice may be made by personal service, or by mail addressed to the last known place or address of such owner or agent. Said notice shall list and describe the method or methods of action that will be acceptable to the board if the owner or agent elects to control, destroy and eradicate said insects or diseases on his own property.

Said notice when published for five consecutive days in at least one daily newspaper or in two consecutive issues of a weekly newspaper, either paper having a general circulation in said district will serve as the written notice to owners of noncommercial timber lands. [1961 c 72 § 1; 1951 c 233 § 5.]

76.06.060 State shall control pests and diseases if owner fails. If the owner or agent so notified shall fail, refuse, neglect or is unable to comply with the requirements of said notice, within a period of thirty days after the date thereof, it shall be the duty of the supervisor or his agents, using such funds as have been, or hereafter may be, made available to proceed with the control, eradication and destruction of such forest pests or forest tree diseases with or without the cooperation of the owner involved in a manner approved by the forest board. [1951 c 233 § 6.]

76.06.070 Lien for costs of control—Collection. Upon the completion of the work directed, authorized and performed under the provisions of this chapter, the supervisor shall prepare a verified statement of the expenses necessarily incurred in performing the work of controlling, eradicating and destroying said forest insects or forest tree diseases. The balance of such expenses after deducting such amounts as may be contributed to the control costs by the state, by the federal government, or by any other agencies, companies, corporations or individuals, shall be a lien to be prorated per acre upon the property, or properties involved: *Provided*, That the amount of said lien shall not

exceed twenty-five percent of the total costs incurred on such owner's lands including necessary buffer strips. Said lien shall be reported by the supervisor to the county assessor of the county in which said lands are situated, and shall be levied and collected with the next taxes on such lands in the same manner and with the same interest, penalty and cost charges as apply to ad valorem property taxes in this state: *Provided further*, Such report and levy shall be made only on commercial timber lands. The assessor shall extend the amounts on the assessment roll in a separate column, and the procedure provided by law for the collection of taxes and delinquent taxes shall be applicable thereto, and, upon the collection thereof, the county treasurer shall repay the same to the supervisor to be applied to the expenses incurred in carrying out the provisions of this chapter. [1951 c 233 § 7.]

Property taxes, generally: Title 84 RCW.

76.06.080 Owner complying with notice is exempt. Every owner, and all owners or representatives, who upon receiving notice as provided in RCW 76.06.050, shall proceed and continue in good faith to control, eradicate and destroy said forest insects and forest tree diseases in accordance with standards established by the supervisor shall be exempt from the provisions hereof as to the lands upon which he or they are so proceeding. [1951 c 233 § 11.]

76.06.090 Dissolution of infestation control district. Whenever the board shall determine that insect control work within the designated district of infestation is no longer necessary or feasible, said board by resolution may dissolve said district. [1951 c 233 § 12.]

76.06.100 Forest insect and disease control fund created. There is hereby created the forest insect and disease control fund of which the state treasurer shall be the custodian. The state treasurer shall keep an account of his records of said fund and all sums deposited therein and expended or withdrawn therefrom. Any sums placed in said fund shall be kept separate and apart from the funds of the state treasurer, and shall not be deemed to be a part of the state funds, but shall be pledged for the purpose of paying costs incurred for the control, eradication, and destruction of forest insect pests and forest diseases. No funds shall be expended for payment of said costs, until so authorized by the board. [1951 c 233 § 8.]

State funds: Chapter 43.79 RCW.

76.06.110 Deposits and availability of fund—Balances do not revert to general fund. All moneys collected under the provisions of RCW 76.06.070, together with such moneys as may be appropriated by the legislature for the purposes of this chapter, by the federal government or by any owner or agent, shall be deposited by the supervisor in the forest insect and disease control fund, and the moneys therein hereby are made available to the board for the purposes of this chapter.

All unexpended balances remaining in said fund shall continue to be available for the purposes of this chapter

and shall not revert to the state general fund. [1951 c 233 § 9.]

76.06.120 Appropriations made available. Any money appropriated to the forest insect and disease control fund is hereby made available to the division of forestry for the purposes of this chapter. [1951 c 233 § 10.]

Chapter 76.09 FOREST PRACTICES

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 76.09.930 Legislative directive.
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76.09.010 Legislative finding and declaration. (1) The legislature hereby finds and declares that the forest land resources are among the most valuable of all resources in the state; that a viable forest products industry is of prime importance to the state's economy; that it is in the public interest for public and private commercial forest lands to be managed consistent with sound policies of natural resource protection; that coincident with maintenance of a viable forest products industry, it is important to afford protection to forest soils, fisheries, wildlife, water quantity and quality, air quality, recreation, and scenic beauty.

(2) The legislature further finds and declares it to be in the public interest of this state to create and maintain through the adoption of this chapter a comprehensive state-wide system of laws and forest practices regulations which will achieve the following purposes and policies:

(a) Afford protection to, promote, foster and encourage timber growth, and require such minimum reforestation of commercial tree species on forest lands as will reasonably utilize the timber growing capacity of the soil following current timber harvest;

(b) Afford protection to forest soils and public resources by utilizing all reasonable methods of technology in conducting forest practices;

(c) Recognize both the public and private interest in the profitable growing and harvesting of timber;

(d) Promote efficiency by permitting maximum operating freedom consistent with the other purposes and policies stated herein;

(e) Provide for regulation of forest practices so as to avoid unnecessary duplication in such regulation;

(f) Provide for interagency input and intergovernmental coordination and cooperation;

(g) Achieve compliance with all applicable requirements of federal and state law with respect to nonpoint sources of water pollution from forest practices; and

(h) To consider reasonable land use planning goals and concepts contained in local comprehensive plans and zoning regulations. [1974 1st ex.s. c 137 § 1.]

76.09.020 Definitions. For purposes of this chapter:

(1) "Appeals board" shall mean the forest practices appeals board created by RCW 76.09.210.

(2) "Commissioner" shall mean the commissioner of public lands.

(3) "Contiguous" shall mean land adjoining or touching by common corner or otherwise. Land having common ownership divided by a road or other right of way shall be considered contiguous.

(4) "Conversion to a use other than commercial timber operation" shall mean a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices regulations.

(5) "Department" shall mean the department of natural resources.

(6) "Forest land" shall mean all land which is capable of supporting a merchantable stand of timber and is not

being actively used for a use which is incompatible with timber growing.

(7) "Forest land owner" shall mean any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner: *Provided*, That any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest land owner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(8) "Forest practice" shall mean any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

(a) Road and trail construction;

(b) Harvesting, final and intermediate;

(c) Precommercial thinning;

(d) Reforestation;

(e) Fertilization;

(f) Prevention and suppression of diseases and insects;

(g) Salvage of trees; and

(h) Brush control.

"Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.

(9) "Forest practices regulations" shall mean any rules promulgated pursuant to RCW 76.09.040.

(10) "Application" shall mean the application required pursuant to RCW 76.09.050.

(11) "Operator" shall mean any person engaging in forest practices except an employee with wages as his sole compensation.

(12) "Person" shall mean any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

(13) "Public resources" shall mean water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.

(14) "Timber" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

(15) "Timber owner" shall mean any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.

(16) "Board" shall mean the forest practices board created in RCW 76.09.030. [1974 1st ex.s. c 137 § 2.]

76.09.030 Forest practices board—Created—Membership—Terms—Vacancies—Meetings—Per diem and expenses—Staff. (1) There is hereby created the forest practices board of the state of

Washington as an agency of state government consisting of members as follows:

- (a) The commissioner of public lands or his designee;
- (b) The director of the department of commerce and economic development or his designee;
- (c) The director of the department of agriculture or his designee;
- (d) The director of the department of ecology or his designee;
- (e) An elected member of a county legislative authority appointed by the governor: *Provided*, That such member's service on the board shall be conditioned on his continued service as an elected county official; and
- (f) Four members of the general public appointed by the governor.

(2) The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, and the terms of two members shall expire December 31, 1978. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his successor is appointed and qualified. The commissioner of public lands or his designee shall be the chairman of the board.

(3) The board shall meet at such times and places as shall be designated by the chairman or upon the written request of the majority of the board. The principal office of the board shall be at the state capital.

(4) Members of the board, except public employees and elected officials, shall receive forty dollars per diem for each day or major portion thereof actually spent in attending to their duties as board members and in addition they shall be entitled to reimbursement for subsistence and actual travel expenses incurred in the performance of their duties in the same manner as provided for state officials generally in chapter 43.03 RCW as now or hereafter amended.

(5) The board may employ such clerical help and staff pursuant to chapter 41.06 RCW as is necessary to carry out its duties. [1974 1st ex.s. c 137 § 3.]

76.09.040 Forest practices regulations—Promulgation—Review of proposed regulations—Hearings—Adoption. (1) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall promulgate forest practices regulations establishing minimum standards for forest practices and setting forth necessary administrative provisions, pursuant to chapter 34.04 RCW and in accordance with the procedures enumerated in this section and RCW 76.09.200. Forest practices regulations pertaining to water quality protection shall be promulgated individually by the board and by the department of ecology after they have reached agreement with respect thereto. All other forest practices regulations shall be promulgated by the board.

Forest practices regulations shall be administered and enforced by the department except as otherwise provided in this chapter. Such regulations shall be promulgated and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2) The board shall prepare proposed forest practices regulations. In addition to any forest practices regulations relating to water quality protection proposed by the board, the department of ecology shall prepare proposed forest practices regulations relating to water quality protection.

Prior to initiating the rule making process, the proposed regulations shall be submitted for review and comments to the department of fisheries, the department of game, and to the counties of the state. After receipt of the proposed forest practices regulations, the departments of fisheries and game and the counties of the state shall have thirty days in which to review and submit comments to the board, and to the department of ecology with respect to its proposed regulations relating to water quality protection. After the expiration of such thirty day period the board and the department of ecology shall jointly hold one or more hearings on the proposed regulations pursuant to chapter 34.04 RCW. At such hearing(s) any county may propose specific forest practices regulations relating to problems existing within such county. The board and the department of ecology may adopt such proposals if they find the proposals are consistent with the purposes and policies of this chapter. [1974 1st ex.s. c 137 § 4.]

76.09.050 Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Procedures—Appeals—Waiver. (1) The board shall establish by rule which forest practices shall be included within each of the following classes:

Class I: Minimal or specific forest practices that may be conducted without submitting an application: *Provided*, That no forest practice shall be within Class I if it has a direct potential for damaging a public resource.

Class II: Forest practices for which the application must be approved or disapproved by the department within fourteen calendar days from the date the department receives the application.

Class III: Forest practices for which the application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application.

(2) No Class II or Class III forest practice shall be commenced or continued after January 1, 1975 unless the department has approved an application containing all information required by RCW 76.09.060: *Provided*, That any person commencing a forest practice during 1974 may continue such forest practice until April 1, 1975, if such person has submitted an application to the department prior to January 1, 1975: *Provided, further*, That in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to approve applications on such terms and conditions

consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

(3) The department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. If the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, then, on petition of the applicant the chairman of the appeals board shall issue an order directing the department to approve or disapprove the application within five days or issue a temporary approval until the application is either finally approved or disapproved: *Provided*, That the temporary approval shall be issued only if it meets the conditions set by the board for such temporary approvals: *Provided, further*, That the department shall have until April 1, 1975 to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975 under the provisions of subsection (2) of this section. Upon receipt of any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology, game, and fisheries, and to the county in which the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(4) If the county believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with RCW 76.09.240, it may so notify the department and the applicant, specifying its objections.

(5) The department shall not approve portions of applications to which a county objects if:

(a) The department receives written notice from the county of such objections within seven business days for a Class II or fourteen business days for a Class III application from the time of its transmittal to the county, or one day before the department acts on the application, whichever is later; and

(b) The objections relate to lands either:

- (i) Platted after January 1, 1960; or
- (ii) Being converted to another use.

The department shall either disapprove those portions of such application or appeal the county objections to the appeals board. If the objections are based on local authority consistent with RCW 76.09.240, the department shall disapprove the application until such time as the county consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county objections. Unless the county either consents or has waived its rights under this subsection, the department shall not approve portions of an application affecting such lands until the minimum time for county objections has expired.

(6) In addition to any rights under the above paragraph, the county may appeal any department approval of an application with respect to any lands within its

jurisdiction. The appeals board may suspend the department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.

(7) Appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.220(9). In such appeals there shall be no presumption of correctness of either the county or the department position.

(8) The department shall, within four business days notify the county of all approvals and disapprovals of an application affecting lands within the county, except to the extent the county has waived its right to such notice.

(9) A county may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department. [1974 1st ex.s. c 137 § 5.]

**76.09.060 Applications for forest practices—
Form—Contents—Conversion of forest land to other
use—New applications—Approval—Emergencies.**

(1) The department shall prescribe the form and contents of the application. The forest practices regulations shall specify by whom and under what conditions the application shall be signed. The application shall be delivered in person or sent by certified mail to the department. The information required may include, but shall not be limited to:

(a) Name and address of the forest land owner, timber owner, and operator;

(b) Description of the proposed forest practice or practices to be conducted;

(c) Legal description of the land on which the forest practices are to be conducted;

(d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and tractor roads;

(e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices regulations;

(g) Soil, geological, and hydrological data with respect to forest practices;

(h) The expected dates of commencement and completion of all forest practices specified in the application;

(i) Provisions for continuing maintenance of roads and other construction to afford protection to public resources; and

(j) An affirmation that the statements contained in the application are true.

(2) At the option of the applicant, the application may be submitted to cover a single forest practice or

any number of forest practices within reasonable geographic or political boundaries as specified by the department. Long range plans may be submitted to the department for review and consultation.

The application shall indicate whether any land covered by the application will be converted or is intended to be converted to a use other than commercial timber production within three years after completion of the forest practices described in it. (a) If the application states that any such land will be or is intended to be so converted:

(i) The reforestation requirements of this chapter and of the forest practices regulations shall not apply if the land is in fact so converted unless applicable alternatives or limitations are provided in forest practices regulations issued under RCW 76.09.070;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.28, 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

(iii) The forest practices described in the application are subject to applicable county, city and regional governmental authority permitted under RCW 76.09.240 as well as the forest practices regulations.

(b) If the application does not state that any land covered by the application will be or is intended to be so converted:

(i) For six years after the date of the application the county or city and regional governmental entities may deny any or all applications for permits or approvals, including building permits and subdivision approvals, relating to nonforestry uses of land subject to the application;

(ii) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal from classification under the provisions of RCW 84.28.065, a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes; and

(iii) Conversion to a use other than commercial timber operations within three years after completion of the forest practices without the consent of the county or municipality shall constitute a violation of each of the county, municipal and regional authorities to which the forest practice operations would have been subject if the application had so stated.

(4) The application shall be either signed by the forest land owner or accompanied by a statement signed by the forest land owner indicating his intent with respect to conversion and acknowledging that he is familiar with the effects of this subsection.

(5) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a greater than ordinary potential for causing material

damage to a public resource, as determined by the department, the applicant shall notify the department five days before the commencement of actual operations.

(6) Before commencing any forest practice in a manner or to an extent significantly different from that described in a previously approved application, the applicant shall submit to the department a new application form in the manner set forth in this section.

(7) The approval given by the department to an application to conduct a forest practice shall be effective for a term of one year from the date of approval and shall not be renewed unless a new application is filed and approved.

(8) Notwithstanding any other provision of this section, no prior application shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application to the department within forty-eight hours after commencement of such practice. [1974 1st ex.s. c 137 § 6.]

76.09.070 Reforestation—Requirements—Procedures. After the completion of a logging operation, satisfactory reforestation as defined by the rules and regulations promulgated by the board shall be completed within three years: *Provided*, That a longer period may be authorized if seed or seedlings are not available: *Provided further*, That a period of up to five years may be allowed where a natural regeneration plan is approved by the department. Upon the completion of a reforestation operation a report on such operation shall be filed with the department of natural resources. Within six months of receipt of such a report the department shall inspect the reforestation operation, and shall determine either that the reforestation operation has been properly completed or that further reforestation and inspection is necessary.

The forest practices regulations may provide alternatives to or limitations on the applicability of reforestation requirements with respect to forest lands being converted in whole or in part to another use which is compatible with timber growing. [1974 1st ex.s. c 137 § 7.]

76.09.080 Stop work orders—Grounds—Contents—Procedure—Appeals. (1) The department shall have the authority to serve upon an operator a stop work order which shall be a final order of the department if:

(a) There is any violation of the provisions of this chapter or the forest practices regulations; or

(b) There is a deviation from the approved application; or

(c) Immediate action is necessary to prevent continuation of or to avoid material damage to a public resource.

(2) The stop work order shall set forth:

(a) The specific nature, extent, and time of the violation, deviation, damage, or potential damage;

(b) An order to stop all work connected with the violation, deviation, damage, or potential damage;

(c) The specific course of action needed to correct such violation or deviation or to prevent damage and to correct and/or compensate for damage to public resources which has resulted; and

(d) The right of the operator to a hearing before the appeals board.

The department shall immediately file a copy of such order with the appeals board and mail a copy thereof to the timber owner and forest land owner at the addresses shown on the application. The operator, timber owner, or forest land owner may commence an appeal to the appeals board within fifteen days after service upon the operator. If such appeal is commenced, a hearing shall be held not more than twenty days after copies of the notice of appeal were filed with the appeals board. Such proceeding shall be a contested case within the meaning of chapter 34.04 RCW. The operator shall comply with the order of the department immediately upon being served, but the appeals board if requested shall have authority to continue or discontinue in whole or in part the order of the department under such conditions as it may impose pending the outcome of the proceeding. [1974 1st ex.s. c 137 § 8.]

76.09.090 Notice of failure to comply—Contents—Procedures—Appeals—Hearing—Final order. If a violation, a deviation, material damage or potential for material damage to a public resource has occurred and the department determines that a stop work order is unnecessary, then the department shall issue and serve upon the operator a notice, which shall clearly set forth:

(1) (a) The specific nature, extent, and time of failure to comply with the approved application; or identifying the damage or potential damage; and/or

(b) The relevant provisions of this chapter or of the forest practice regulations relating thereto;

(2) The right of the operator to a hearing before the department; and

(3) The specific course of action ordered by the department to be followed by the operator to correct such failure to comply and to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

The department shall mail a copy thereof to the forest land owner and the timber owner at the addresses shown on the application, showing the date of service upon the operator. Such notice to comply shall become a final order of the department and such operator shall undertake the course of action so ordered by the department unless, within fifteen days after the date of service of such notice to comply, the operator, forest land owner, or timber owner, shall request the department in writing to schedule a hearing. If so requested, the department shall schedule a hearing on a date not more than twenty days after receiving such request. Within ten days after such hearing, the department shall issue a final order either withdrawing its notice to comply or clearly setting forth the specific course of action to be followed by such operator. Such operator shall undertake the course of action so ordered by the department unless within thirty days after the date of

such final order, the operator, forest land owner, or timber owner appeals such final order to the appeals board. [1974 1st ex.s. c 137 § 9.]

76.09.100 Failure to comply with water quality protection—Department of ecology authorized to take action, when. If the department of ecology determines that a person has failed to comply with the forest practices regulations relating to water quality protection, and that the department of natural resources has not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof. If the department of natural resources fails to take authorized enforcement action under RCW 76.09.080, 76.09.090, 76.09.120, 76.09.130, and 76.09.170, the department of ecology may take such action, except that no civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources. [1974 1st ex.s. c 137 § 10.]

76.09.110 Final orders or final decisions binding upon all parties. Unless declared invalid on appeal, a final order of the department or a final decision of the appeals board shall be binding upon all parties. [1974 1st ex.s. c 137 § 11.]

76.09.120 Failure of owner to take required course of action—Notice of cost—Department authorized to complete course of action—Liability of owner for costs—Lien. If an operator fails to undertake and complete any course of action with respect to a forest practice, as required by a final order of the department or a final decision of the appeals board or any court pursuant to RCW 76.09.080 and 76.09.090, the department may determine the cost thereof and give written notice of such cost to the operator, the timber owner and the owner of the forest land upon or in connection with which such forest practice was being conducted. If such operator, timber owner, or forest land owner fails within thirty days after such notice is given to undertake such course of action, or having undertaken such course of action fails to complete it within a reasonable time, the department may expend any funds available to undertake and complete such course of action and such operator, timber owner, and forest land owner shall be jointly and severally liable for the actual, direct cost thereof, but in no case more than the amount set forth in the notice from the department. If not paid within sixty days after the department completes such course of action and notifies such forest land owner in writing of the amount due, such amount shall become a lien on such forest land and the department may collect such amount in the same manner provided in chapter 60.04 RCW for mechanics' liens. [1974 1st ex.s. c 137 § 12.]

76.09.130 Failure to obey stop work order—Departmental action authorized—Liability of owner or operator for costs. When the operator has failed to obey a stop work order issued under the provisions of RCW 76.09.080 the department may take immediate action to

prevent continuation of or avoid material damage to public resources. If a final order or decision fixes liability with the operator, timber owner, or forest land owner, they shall be jointly and severally liable for such emergency costs which may be collected in the manner provided for in RCW 76.09.120. [1974 1st ex.s. c 137 § 13.]

76.09.140 Enforcement. (1) The department of natural resources, through the attorney general, may take any necessary action to enforce any final order or final decision, or to enjoin any forest practices by any person for a one year period after such person has failed to comply with a final order or a final decision.

(2) The department of ecology, through the attorney general, may take any necessary action to enforce any final order of such department or any final decision of the pollution control hearings board relating to water quality protection, or to enjoin any forest practices relating to water quality protection by any person for a one year period after such person has failed to comply with a final order or final decision.

(3) A county may bring injunctive, declaratory, or other actions for enforcement for forest practice activities within its jurisdiction in the superior court as provided by law against the department or the department of ecology, the forest land owner, timber owner or operator to enforce the forest practice regulations or any final order of the department, or the department of ecology, the appeals board or the pollution control hearings board: *Provided*, That no civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources or department of ecology: *And provided further*, That such actions shall not be commenced unless the department or the department of ecology fails to take appropriate action after ten days written notice to the respective department by the county of a violation of the forest practices regulations or final orders of the department or the department of ecology or the appeals board or the pollution control hearings board. [1974 1st ex.s. c 137 § 14.]

76.09.150 Inspection—Right of entry. The department shall make inspections of forest lands, before, during and after the conducting of forest practices as necessary for the purpose of insuring compliance with this chapter and the forest practice regulations and to insure that no material damage occurs to the natural resources of this state as a result of such practices.

Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices regulations. [1974 1st ex.s. c 137 § 15.]

76.09.160 Right of entry by department of ecology. Any duly authorized representative of the department of ecology shall have the right to enter upon forest land at any reasonable time to administer the provisions of

this chapter and RCW 90.48.420. [1974 1st ex.s. c 137 § 16.]

76.09.170 Violations—Penalties—Remission or mitigation—Appeals. Every person who fails to comply with any provision of RCW 76.09.010 through 76.09.280 or of the forest practices regulations shall be subject to a penalty in an amount of not more than one thousand dollars per day for every such violation. Each and every such violation shall be a separate and distinct offense. In case of a continuing violation, every day's continuance shall be a separate and distinct violation. Every person who through an act of commission or omission procures, aids or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided for: *Provided*, That no penalty shall be imposed under this section upon any governmental official, an employee of any governmental department, agency, or entity, or a member of any board or advisory committee created by this chapter for any act or omission in his duties in the administration of this chapter or of any regulation promulgated thereunder.

The penalty herein provided for shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department of natural resources, or the department of ecology if water quality protection is involved, describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department imposing the penalty for the remission or mitigation of such penalty. Upon receipt of the application, that department may remit or mitigate the penalty upon whatever terms that department in its discretion deems proper, provided the department imposing the penalty deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department of natural resources and the department of ecology shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such regulations as they may deem proper.

Any person incurring any penalty hereunder may appeal the same to the forest practices appeals board: *Provided*, That the appeal of any penalty imposed by the department of ecology relating to water quality protection shall be to the pollution control hearings board.

Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department or the department of ecology. When such an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the department or the department of ecology setting forth the disposition of the application.

Any penalty imposed hereunder shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When such an application for remission or mitigation is made, any

penalty incurred hereunder shall become due and payable thirty days after receipt of notice setting forth the disposition of such application unless an appeal is filed from such disposition. Whenever an appeal of any penalty incurred hereunder is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final decision confirming the penalty in whole or in part.

If the amount of any penalty is not paid to the department or the department of ecology within thirty days after it becomes due and payable, the attorney general, upon the request of the respective director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided. [1974 1st ex.s. c 137 § 17.]

76.09.180 Disposition of penalties. All penalties received or recovered by state agency action for violations as prescribed in RCW 76.09.170 shall be deposited in the state general fund. All such penalties recovered as a result of local government action shall be deposited in the local government general fund. Any funds recovered as reimbursement for damages pursuant to RCW 76.09.080 and 76.09.090 shall be transferred to that agency with jurisdiction over the public resource damaged, including but not limited to political subdivisions, the department of game, the department of fisheries, the department of ecology, the department of natural resources, or any other department that may be so designated: *Provided*, That nothing herein shall be construed to affect the provisions of RCW 90.48.142. [1974 1st ex.s. c 137 § 18.]

76.09.190 Additional penalty, gross misdemeanor. In addition to the penalties imposed pursuant to RCW 76.09.170, any person who conducts any forest practice or knowingly aids or abets another in conducting any forest practice in violation of any provisions of RCW 76.09.010 through 76.09.280 or 90.48.420, or of the regulations implementing RCW 76.09.010 through 76.09.280 or 90.48.420, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for a term of not more than one year or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation. [1974 1st ex.s. c 137 § 19.]

76.09.200 Forest practices advisory committee—Membership—Chairman—Preparation of proposed forest practices regulations—Procedure. (1) On or before the thirtieth day after February 14, 1974, the governor shall appoint, with the approval of the board, the forest practices advisory committee to consist of the following members: A designated representative of the college of forest resources of the University of

Washington, a designated representative of the department of forestry and range management of the college of agriculture of Washington State University, a designated representative of the Washington soil and water conservation districts, a designated representative of the department of fisheries, and a designated representative of the department of game; three representatives of private forest land owners and timber owners who regularly engage in forest operations, who are selected for staggered three year terms to represent eastern and western Washington and large and small owners; and three members of the public at large selected for staggered three year terms who have no direct financial interest other than wages in the forest products industry. The advisory committee shall select a chairman from among its members whose vote shall be counted twice in case of a tie vote.

(2) The advisory committee shall hold hearings and take testimony and, on or before August 1, 1974, shall prepare proposed forest practices regulations and submit them to the board. The forest practices regulations shall be applicable state-wide to the extent practicable but shall establish not less than two or more than five forest regions within the state to which different regulations may be applicable, reflecting variations in such factors as timber and soil types and climatic conditions. To assist in the initial preparation of proposed forest practices regulations for different forest regions, the chairman of the advisory committee shall establish regional committees to assist the advisory committee. Such regional committees shall be composed of nine members, four of whom are private forest land owners regularly engaged in forest practices.

(4) Nothing contained in this section shall be construed to preclude submission of proposed forest practices regulations by any other persons or to eliminate any procedures set forth in chapter 34.04 RCW for adoption, repeal, or modification of rules. [1974 1st ex.s. c 137 § 20.]

Reviser's note: Hiatus in subsection numbering results from veto of subsection (3).

76.09.210 Forest practices appeals board—Created—Membership—Terms—Vacancies—Removal. (1) There is hereby created the forest practices appeals board of the state of Washington as an agency of state government.

(2) The appeals board shall consist of three members qualified by experience and training in pertinent matters pertaining to the environment, and at least one member of the appeals board shall have been admitted to the practice of law in this state and shall be engaged in the legal profession at the time of his appointment. The appeals board shall be appointed by the governor with the advice and consent of the senate, and no more than two of the members at the time of appointment or during their term shall be members of the same political party.

(3) Members shall be appointed for a term of six years and shall serve until their successors are appointed and have qualified. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired

portion of the term in which such vacancy occurs. The terms of the first three members of the appeals board shall be staggered so that their terms shall expire after two, four, and six years.

(4) Any member may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member by the tribunal shall disqualify such member for reappointment.

(5) Each member of the appeals board:

(a) Shall not be a candidate for nor hold any other public office or trust, and shall not engage in any occupation or business interfering with or inconsistent with his duty as a member, nor shall he serve on or under any committee of any political party; and

(b) Shall not for a period of one year after the termination of his membership, act in a representative capacity before the appeals board on any matter. [1974 1st ex.s. c 137 § 21.]

76.09.220 Forest practices appeals board—Compensation—Expenses—Staff—Chairman—Office—Quorum—Powers and duties—Jurisdiction—Review. (1) The appeals board shall operate on either a part time or a full time basis, as determined by the governor. If it is determined that the appeals board shall operate on a full time basis, each member shall receive an annual salary to be determined by the governor. If it is determined that the appeals board shall operate on a part time basis, each member shall receive compensation on the basis of seventy-five dollars for each day spent in performance of his duties: *Provided*, That such compensation shall not exceed ten thousand dollars in a fiscal year. Each member shall receive reimbursement for travel and other expenses incurred in the discharge of his duties in accordance with the provisions of chapter 43.03 RCW.

(2) The appeals board may appoint, discharge, and fix the compensation of an executive secretary, a clerk, and such other clerical, professional, and technical assistants as may be necessary. As specified in RCW 41.06.073, such employment shall be in accordance with the rules of the state civil service law, chapter 41.06 RCW.

(3) The appeals board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chairman, and shall at least biennially thereafter meet and elect or reelect a chairman.

(4) The principal office of the appeals board shall be at the state capital, but it may sit or hold hearings at any other place in the state. A majority of the appeals board shall constitute a quorum for making orders or decisions, promulgating rules and regulations necessary

for the conduct of its powers and duties, or transacting other official business, and may act though one position on the board be vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The appeals board shall perform all the powers and duties granted to it in this chapter or as otherwise provided by law.

(5) The appeals board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members and upon being filed at the appeals board's principal office, and shall be open to public inspection at all reasonable times.

(6) The appeals board shall either publish at its expense or make arrangements with a publishing firm for the publication of those of its findings and decisions which are of general public interest, in such form as to assure reasonable distribution thereof.

(7) The appeals board shall maintain at its principal office a journal which shall contain all official actions of the appeals board, with the exception of findings and decisions, together with the vote of each member on such actions. The journal shall be available for public inspection at the principal office of the appeals board at all reasonable times.

(8) The forest practices appeals board shall have exclusive jurisdiction to hear appeals arising from an action or determination by the department, and the pollution control hearings board established by RCW 43.21B.010 shall have exclusive jurisdiction to hear appeals arising from an action or determination by the department of ecology.

(9) (a) Any person aggrieved by the approval or disapproval of an application to conduct a forest practice may seek review from the appeals board by filing a request for the same within thirty days of the approval or disapproval. Concurrently with the filing of any request for review with the board as provided in this section, the requestor shall file a copy of his request with the department and the attorney general. The attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with.

(b) The review proceedings authorized in subparagraph (a) of this subsection are subject to the provisions of chapter 34.04 RCW pertaining to procedures in contested cases. [1974 1st ex.s. c 137 § 22.]

76.09.230 Forest practices appeals board—Appeal procedure—Judicial review. (1) In all appeals over which the appeals board has jurisdiction, a party taking an appeal may elect either a formal or an informal hearing, unless such party has had an informal hearing with the department. Such election shall be made according to the rules of practice and procedure to be promulgated by the appeals board. In the event that appeals are taken from the same decision, order, or determination, as the case may be, by different parties and only one of such parties elects a formal hearing, a formal hearing shall be granted.

(2) In all appeals the appeals board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions but such powers shall be exercised in conformity with chapter 34.04 RCW.

(3) In all appeals involving formal hearing the appeals board, and each member thereof, shall be subject to all duties imposed upon and shall have all powers granted to, an agency by those provisions of chapter 34.04 RCW relating to contested cases.

(4) All proceedings, including both formal and informal hearings, before the appeals board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. The appeals board shall publish such rules and arrange for the reasonable distribution thereof.

(5) Judicial review of a decision of the appeals board shall be de novo except when the decision has been rendered pursuant to the formal hearing, in which event judicial review may be obtained only pursuant to RCW 34.04.130 and 34.04.140. [1974 1st ex.s. c 137 § 23.]

76.09.240 Restrictions upon local political subdivisions or regional entities—Exceptions. No county, city, municipality or other local or regional governmental entity shall adopt or enforce any law, ordinance, or regulation pertaining to forest practices, except that to the extent otherwise permitted by law, such entities may exercise any:

(1) Land use planning or zoning authority: *Provided*, That exercise of such authority may regulate forest practices only: (a) Where the application submitted under RCW 76.09.060 indicates that the lands will be converted to a use other than commercial timber production; or (b) on lands which have been platted after January 1, 1960; or (c) on tracts of forest land not otherwise covered under subsections (a) and (b) and less than twenty acres including road rights of way in contiguous ownership not classified, designated and taxed under chapter 84.34 RCW, chapter 84.33 RCW, or chapter 84.28 RCW: *Provided*, That no permit system solely for forest practices shall be allowed; that any additional or more stringent regulations shall not be inconsistent with the forest practices regulations enacted under this chapter; and such local regulations shall not unreasonably prevent timber harvesting;

(2) Taxing powers;

(3) Regulatory authority with respect to public health; and

(4) Authority granted by chapter 90.58 RCW, the "Shoreline Management Act of 1971". [1974 1st ex.s. c 137 § 24.]

76.09.250 Policy for continuing program of orientation and training. The board shall establish a policy for a continuing program of orientation and training to be conducted by the department with relation to forest practices and the regulation thereof pursuant to RCW 76.09.010 through 76.09.280. [1974 1st ex.s. c 137 § 25.]

76.09.260 Department to represent state's interest—Cooperation with other public agencies—Grants and gifts. The department shall represent the state's interest in matters pertaining to forestry and forest practices, including federal matters, and may consult with and cooperate with the federal government and other states, as well as other public agencies, in the study and enhancement of forestry and forest practices. The department is authorized to accept, receive, disburse, and administer grants or other funds or gifts from any source, including private individuals or agencies, the federal government, and other public agencies for the purposes of carrying out the provisions of this chapter.

Nothing in this chapter shall modify the designation of the department of ecology as the agency representing the state for all purposes of the Federal Water Pollution Control Act. [1974 1st ex.s. c 137 § 26.]

76.09.270 Annual determination of state's research needs—Recommendations. The department, along with other affected agencies and institutions, shall annually determine the state's needs for research in forest practices and the impact of such practices on public resources and shall recommend needed projects to the governor and the legislature. [1974 1st ex.s. c 137 § 27.]

76.09.280 Removal of log and debris jams from streams. Forest land owners shall permit reasonable access requested by appropriate agencies for removal from stream beds abutting their property of log and debris jams accumulated from upstream ownerships. Any owner of logs in such jams in claiming or removing them shall be required to remove all unmerchantable material from the stream bed in accordance with the forest practices regulations. Any material removed from stream beds must also be removed in compliance with all applicable laws administered by other agencies. [1974 1st ex.s. c 137 § 28.]

76.09.285 Water quality standards affected by forest practices. See RCW 90.48.420.

76.09.900 Short title. Sections 1 through 28 of this 1974 act shall be known and may be cited as the "Forest Practices Act of 1974". [1974 1st ex.s. c 137 § 29.]

76.09.905 Air pollution laws not modified. Nothing in RCW 76.09.010 through 76.09.280 or 90.48.420 shall modify chapter 70.94 RCW or any other provision of law relating to the control of air pollution. [1974 1st ex.s. c 137 § 31.]

76.09.910 Shoreline management act, hydraulics act, other statutes and ordinances not modified. Nothing in RCW 76.09.010 through 76.09.280 shall modify any requirements to obtain permits, or any violations that may be found, under the Shoreline Management Act of 1971 (chapter 90.58 RCW), the Hydraulics Act (RCW 75.20.100), other state statutes in effect on January 1, 1975, and any local ordinances not inconsistent with RCW 76.09.240. [1974 1st ex.s. c 137 § 32.]

76.09.915 Repeal and savings. (1) The following acts or parts of acts are each repealed:

(a) Section 2, chapter 193, Laws of 1945, section 1, chapter 218, Laws of 1947, section 1, chapter 44, Laws of 1953, section 1, chapter 79, Laws of 1957, section 10, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.010;

(b) Section 1, chapter 193, Laws of 1945 and RCW 76.08.020;

(c) Section 3, chapter 193, Laws of 1945, section 2, chapter 218, Laws of 1947, section 1, chapter 115, Laws of 1955 and RCW 76.08.030;

(d) Section 4, chapter 193, Laws of 1945, section 3, chapter 218, Laws of 1947, section 2, chapter 79, Laws of 1957 and RCW 76.08.040;

(e) Section 5, chapter 193, Laws of 1945, section 4, chapter 218, Laws of 1947, section 3, chapter 79, Laws of 1957, section 11, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.050;

(f) Section 6, chapter 193, Laws of 1945, section 5, chapter 218, Laws of 1947, section 2, chapter 44, Laws of 1953, section 12, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.060;

(g) Section 7, chapter 193, Laws of 1945 and RCW 76.08.070;

(h) Section 8, chapter 193, Laws of 1945, section 6, chapter 218, Laws of 1947, section 3, chapter 44, Laws of 1953, section 2, chapter 115, Laws of 1955, section 1, chapter 40, Laws of 1961 and RCW 76.08.080; and

(i) Section 9, chapter 193, Laws of 1945, section 4, chapter 44, Laws of 1953 and RCW 76.08.090.

(2) Notwithstanding the foregoing repealer, obligations under such sections or permits issued thereunder and in effect on the effective date of this section shall continue in full force and effect, and no liability thereunder, civil or criminal, shall be in any way modified. [1974 1st ex.s. c 137 § 34.]

76.09.920 Application for extension of prior permits. Permits issued by the department under the provisions of RCW 76.08.030 during 1974 shall be effective until April 1, 1975 if an application has been submitted under the provisions of RCW 76.09.050 prior to January 1, 1975. [1974 1st ex.s. c 137 § 35.]

76.09.925 Effective dates—1974 1st ex.s. c 137. RCW 76.09.030, 76.09.040, 76.09.050, 76.09.060, 76.09.200, 90.48.420, and 76.09.935 are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. RCW 76.09.010, 76.09.020, 76.09.070, 76.09.080, 76.09.090, 76.09.100, 76.09.110, 76.09.120, 76.09.130, 76.09.140, 76.09.150, 76.09.160, 76.09.170, 76.09.180, 76.09.190, 76.09.210, 76.09.220, 76.09.230, 76.09.240, 76.09.250, 76.09.260, 76.09.270, 76.09.280, 76.09.900, 76.09.905, 76.09.910, 76.09.930, 76.09.915, and 76.09.920 shall take effect January 1, 1975. [1974 1st ex.s. c 137 § 37.]

76.09.930 Legislative directive. Sections 1 through 29 and sections 31 and 32 of this 1974 act shall constitute a new chapter in Title 76 RCW. [1974 1st ex.s. c 137 § 33.]

76.09.935 Severability—1974 1st ex.s. c 137. If any provision of this 1974 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provisions to other persons or circumstances shall not be affected. [1974 1st ex.s. c 137 § 36.]

Chapter 76.10 SURFACE MINING

Reviser's note: Chapter 64, Laws of 1970 ex.s. has been codified as a new chapter in Title 78 RCW "Mines, Minerals, and Petroleum" although section 1 of the act states "Sections 2 through 25 of this act shall constitute a new chapter in Title 76 RCW." As the act pertains solely to surface mining, the change in placement has been made to preserve the subject matter arrangement of the code.

Chapter 76.12 REFORESTATION

Sections	
76.12.020	Powers of board—Acquisition of land for reforestation—Taxes, cancellation.
76.12.030	Deed of county land to board—Disposition of proceeds.
76.12.035	Reacquisition from federal government of lands originally acquired through tax foreclosure—Agreements.
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76.12.045	Gifts of county or city land for offices, warehouses, etc.—Use of lands authorized.
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76.12.073	Transfer of state forest lands back to county for public park use—Timber resource management.
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76.12.080	Acquisition of forest land—Requisites.
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76.12.090	Utility bonds.
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76.12.110	Forest development account.
76.12.120	Sales and leases of timber, timber land, etc.—Disposition of revenue.
76.12.140	Logging of land—Rules and regulations—Penalty.
76.12.150	Report on suitable lands.
76.12.155	Record of forest board proceedings, etc.
76.12.160	Sale or exchange of tree seedling stock and tree seed.
76.12.170	Use of proceeds specified.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see note following Title 76 RCW digest.

Reservation of state land for reforestation after timber removed: RCW 79.01.164.

76.12.020 Powers of board—Acquisition of land for reforestation—Taxes, cancellation. The board shall have the power to accept gifts and bequests of money or other property, made in its own name, or made in the name of the state, to promote generally the interests of reforestation or for a specific named purpose in connection with reforestation, and to acquire in the name of the state, by purchase or gift, any lands which by reason of their location, topography or geological formation, are chiefly valuable for purpose of developing and growing timber, and to designate such lands and any lands of the same character belonging to the state as state forest lands; and may acquire by gift or purchase any lands of the same character. Said board shall have power to seed, plant and develop forests on any lands, purchased, acquired or designated by it as state forest lands, and shall furnish such care and fire protection for such lands as it shall deem advisable. Upon approval of the board of county commissioners of the county in which said land is located such gift or donation of land may be accepted subject to delinquent general taxes thereon, and upon such acceptance of such gift or donation subject to such taxes, the state forest board shall record the deed of conveyance thereof and file with the assessor and treasurer of the county wherein such land is situated, written notice of acquisition of such land, and that all delinquent general taxes thereon, except state taxes, shall be canceled, and the county treasurer shall thereupon proceed to make such cancellation in the records of his office. Thereafter, such lands shall be held in trust, protected, managed, and administered upon, and the proceeds therefrom disposed of, under RCW 76.12.030. [1937 c 172 § 1; 1929 c 117 § 1; 1923 c 154 § 3; RRS § 5812-3. Prior: 1921 c 169 § 1, part.]

Reviser's note: "board" refers to the state forest board, see note following Title 76 RCW digest.

76.12.030 Deed of county land to board—Disposition of proceeds. If any land acquired by a county through foreclosure of tax liens, or otherwise, comes within the classification of land described in RCW 76.12.020 and can be used as state forest land and if the board deems such land necessary for the purposes of this chapter, the county shall, upon demand by the board, deed such land to the board and the land shall become a part of the state forest lands, and upon such deed being made the commissioner of public lands shall be notified and enter and note it upon the records of his office.

Such land shall be held in trust and administered and protected by the board as other state forest lands. Any moneys derived from the lease of such land or from the sale of forest products, oils, gases, coal, minerals, or fossils therefrom, shall be distributed as follows:

(1) The expense incurred by the state for administration, reforestation, and protection, not to exceed twenty-five percent, which rate of percentage shall be determined by the board of natural resources, shall be returned to the forest development account in the state general fund.

(2) Any balance remaining shall be paid to the county in which the land is located to be paid, distributed, and prorated, except as hereinafter provided, to the various funds in the same manner as general taxes are paid and distributed during the year of payment: *Provided*, That any such balance remaining paid to a county of the seventh, eighth, or ninth class shall first be applied to the reduction of any indebtedness existing in the current expense fund of such county during the year of payment. [1971 ex.s. c 224 § 1; 1969 c 110 § 1; 1957 c 167 § 1; 1951 c 91 § 1; 1935 c 126 § 1; 1927 c 288 § 3, part (adding a new section to 1923 c 154 § 3b); RRS § 5812-36.]

Reviser's note: The forest development fund was originally created by 1923 c 154 § 6. It was recreated by 1951 c 149 (RCW 76.12.110) and was later abolished and superseded by 1955 c 370 (RCW 43.79-.330 through 43.79.334) which created a forest development account in the general fund and transferred thereto all moneys in the forest development fund. RCW 76.12.110 was amended accordingly in 1959.

76.12.035 Reacquisition from federal government of lands originally acquired through tax foreclosure—Agreements. Whenever any forest land which shall have been acquired by any county through the foreclosure of tax liens, or otherwise, and which shall have been acquired by the federal government either from said county or from the state holding said lands in trust, and shall be available for reacquisition, the state board of natural resources and the board of county commissioners of any such county are hereby authorized to enter into an agreement for the reacquisition of such lands as state forest lands in trust for such county. Such agreement shall provide for the price and manner of such reacquisition. The state board of natural resources is authorized to provide in such agreement for the advance of funds available to it for such purpose from the forest development account, all or any part of the price for such reacquisition so agreed upon, which advance shall be repaid at such time and in such manner as in said agreement provided, solely from any distribution to be made to said county under the provisions of RCW 76.12.030; that the title to said lands shall be retained by the state free from any trust until the state shall have been fully reimbursed for all funds advanced in connection with such reacquisition; and that in the event of the failure of the county to repay such advance in the manner provided, the said forest lands shall be retained by the state to be administered and/or disposed of in the same manner as other state forest lands free and clear of any trust interest therein by said county. Such county shall make provisions for the reimbursement of the various funds from any moneys derived from such lands so acquired, or any other county trust forest board lands which are distributable in a like manner, for any sums withheld from funds for other areas which would have been distributed thereto from time to time but for such agreement. [1959 c 87 § 1.]

76.12.040 Gifts of county or city land for offices, warehouses, etc. Any county, city or town is authorized and empowered to convey to the state of Washington any lands owned by such county, city or town upon the selection of such lands by the forestry board of the state

of Washington and the state forestry board is hereby authorized to select and accept conveyances of lands from such counties, cities or towns, suitable for use by the said forestry board as locations for offices, warehouses and machinery storage buildings in the administration of the forestry laws and lands of the state of Washington: *Provided, however,* No consideration shall be paid by the state nor by the state forestry board for the conveyance of such lands by such county, city or town. [1937 c 125 § 1; RRS § 5812-3c. FORMER PART OF SECTION: 1937 c 125 § 2 now codified as RCW 76.12.045.]

76.12.045 Gifts of county or city land for offices, warehouses, etc.—Use of lands authorized. The state forestry board, through the division of forestry of the department of conservation and development, is authorized to use such lands for the purposes hereinbefore expressed and to improve said lands and build thereon any necessary structures for the purposes hereinbefore expressed and expend in so doing such funds as may be authorized by law therefor. [1937 c 125 § 2; RRS § 5812-3d. Formerly RCW 76.12.040.]

76.12.050 Exchange of lands to consolidate, block up holdings or obtain lands having commercial recreational leasing potential. The board of county commissioners of any county and/or the mayor and city council or city commission of any city or town and/or the board of natural resources shall have authority to exchange, each with the other, or with the federal forest service, the federal government or any proper agency thereof and/or with any private landowner, county land of any character, land owned by municipalities of any character, and land owned by the state under the jurisdiction of the department of natural resources, for real property of equal value for the purpose of consolidating and blocking up the respective land holdings of any county, municipality, the federal government, or the state of Washington or for the purpose of obtaining lands having commercial recreational leasing potential. [1973 1st ex.s. c 50 § 1; 1961 c 77 § 1; 1937 c 77 § 1; RRS § 5812-3e.]

76.12.060 Exchange of lands to consolidate and block up holdings—Agreements and deeds by commissioner. The commissioner of public lands shall, with the advice and approval of the attorney general, execute such agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to complete an exchange as authorized by the board of natural resources under RCW 76.12.050. [1961 c 77 § 2; 1937 c 77 § 2; RRS § 5812-3f.]

76.12.065 Exchange of lands to consolidate and block up holdings—Lands acquired are subject to same laws and administered for same fund as lands exchanged. Lands acquired by the state of Washington as the result of any exchange authorized under RCW 76.12.050 shall be held and administered for the benefit of the same fund and subject to the same laws as were the lands exchanged therefor. [1961 c 77 § 3.]

76.12.070 Reconveyance to county in certain cases. Whenever any county shall have acquired by tax foreclosure, or otherwise, lands within the classification of RCW 76.12.020 and shall have thereafter contracted to sell such lands to bona fide purchasers before the same may have been selected as forest lands by the state forest board, and has heretofore deeded or shall hereafter deed because of inadvertence or oversight such lands to the state or to the state forest board to be held under RCW 76.12.030 or any amendment thereof; the state forest board upon being furnished with a certified copy of such contract of sale on file in such county and a certificate of the county treasurer showing said contract to be in good standing in every particular and that all due payments and taxes have been made thereon, and upon receipt of a certified copy of a resolution of the board of county commissioners of such county requesting the reconveyance to the county of such lands, is hereby authorized to reconvey such lands to such county by quitclaim deed executed by the chairman and secretary of said board: *Provided,* Such reconveyance of lands heretofore acquired by the state or state forest board be made within one year from the taking effect of this act and such reconveyance of lands hereafter so acquired be made within one year from the conveyance thereof to the state or state forest board. [1941 c 84 § 1; Rem. Supp. 1941 § 5812-3g.]

Reviser's note: Effective date of this act [1941 c 84 § 1] was midnight June 11, 1941, see preface 1941 session laws.

76.12.072 Transfer of state forest lands back to county for public park use—Procedure—Reconveyance back when use ceases. Whenever the board of county commissioners of any county shall determine that forest lands, that were acquired from such county by the state pursuant to RCW 76.12.030 and that are under the administration of the department of natural resources, are needed by the county for public park use in accordance with the county and the state outdoor recreation plans, the board of county commissioners may file an application with the board of natural resources for the transfer of such forest lands.

Upon the filing of an application by the board of county commissioners, the department of natural resources shall cause notice of the impending transfer to be given in the manner provided by *RCW 42.32.010. If the department of natural resources determines that the proposed use is in accordance with the state outdoor recreation plan, it shall reconvey said forest lands to the requesting county to have and to hold for so long as the forest lands are developed, maintained, and used for the proposed public park purpose. This reconveyance may contain conditions to allow the department of natural resources to coordinate the management of any adjacent state owned lands with the proposed park activity to encourage maximum multiple use management and may reserve rights of way needed to manage other state owned lands in the area. The application shall be denied if the department of natural resources finds that the proposed use is not in accord with the state outdoor recreation plan. If the land is not, or ceases to be, used for public park purposes the land shall be conveyed

back to the department of natural resources upon request of the department. [1969 ex.s. c 47 § 1.]

***Reviser's note:** RCW 42.32.010 was repealed by 1971 ex. sess. c 250 § 15. Later enactment, see RCW 42.30.060.

76.12.073 Transfer of state forest lands back to county for public park use—Timber resource management. The timber resources on any such state forest land transferred to the counties under RCW 76.12.072 shall be managed by the department of natural resources to the extent that this is consistent with park purposes and meets with the approval of the board of county commissioners. Whenever the department of natural resources does manage the timber resources of such lands, it will do so in accordance with the general statutes relative to the management of all other state forest lands. [1969 ex.s. c 47 § 2.]

76.12.074 Transfer of state forest lands back to county for public park use—Lands transferred by deed. Under provisions mutually agreeable to the board of county commissioners and the board of natural resources, lands approved for transfer to a county for public park purposes under the provisions of RCW 76.12.072 shall be transferred to the county by deed. [1969 ex.s. c 47 § 3.]

76.12.075 Transfer of state forest lands back to county for public park use—Provisions cumulative and nonexclusive. The provisions of RCW 76.12.072 through 76.12.075 shall be cumulative and nonexclusive and shall not repeal any other related statutory procedure established by law. [1969 ex.s. c 47 § 4.]

76.12.080 Acquisition of forest land—Requisites. Said board shall take such steps as it deems advisable for locating and acquiring lands suitable for state forests and reforestation. No sum in excess of two dollars per acre shall ever be paid or allowed either in cash, bonds or otherwise, for any lands suitable for forest growth, but devoid of such; nor shall any sum in excess of six dollars per acre be paid or allowed either in cash, bonds or otherwise, for any lands adequately restocked with young growth or left in a satisfactory natural condition for natural reforestation and continuous forest production; nor shall any lands ever be acquired by said board except upon the approval of the title by the attorney general and on a conveyance being made to the state of Washington by good and sufficient deed. No forest lands shall be designated, purchased, or acquired by said board unless the area so designated or the area to be acquired shall, in the judgment of the board be of sufficient acreage and so located that it can be economically administered for forest development purposes. Whenever the board acquires or designates an area as forest lands it shall designate such area by a distinctive name or number, e.g., "State forest No. ----", or, "Cascade State Forest". [1923 c 154 § 4; RRS § 5812-4. Prior: 1921 c 169 § 1, part.]

76.12.085 Validation of prior land transfers—Certain lands declared state forest lands. All transfers of lands heretofore made to the state forest board as state forest lands are hereby validated, and all lands heretofore administered by the state forest board as state forest lands are hereby declared to be state forest lands and public lands of the state of Washington. [1953 c 209 § 1.]

76.12.090 Utility bonds. For the purpose of acquiring and paying for lands for state forests and reforestation as herein provided the board may issue utility bonds of the state of Washington, in an amount not to exceed two hundred thousand [dollars] in principal, during the biennium expiring March 31, 1925, and such other amounts as may hereafter be authorized by the legislature. Said bonds shall bear interest at not to exceed the rate of two percent per annum which shall be payable annually. Said bonds shall never be sold or exchanged at less than par and accrued interest, if any, and shall mature in not less than a period equal to the time necessary to develop a merchantable forest on the lands exchanged for said bonds or purchased with money derived from the sale thereof. Said bonds shall be known as state forest utility bonds. The principal or interest of said bonds shall not be a general obligation of the state, but shall be payable only from the forest development fund hereinafter created. The board may issue said bonds in exchange for lands selected by it in accordance with *this act, or may sell said bonds in such manner as it deems advisable, and with the proceeds purchase and acquire such lands. Any of said bonds issued in exchange and payment for any particular tract of lands may be made a first and prior lien against the particular land for which they are exchanged, and upon failure to pay said bonds and interest thereon according to their terms, the lien of said bonds may be foreclosed by appropriate court action. [1937 c 104 § 1; 1923 c 154 § 5; RRS § 5812-5.]

***Reviser's note:** "this act" appears in 1923 c 154 codified as RCW 43.64.010, 43.64.020, 43.12.140, 76.12.020, 76.12.030, 76.12.080, 76.12.090, 76.12.110, 76.12.120, 76.12.140, and 76.12.150.

76.12.100 Bonds—Purchase price of land limited—Retirement of bonds. For the purpose of acquiring, seeding[,] reforestation and administering land for forests and of carrying out the provisions of chapter 154 of the Laws of 1923, the state forest board is authorized to issue and dispose of utility bonds of the state of Washington in an amount not to exceed one hundred thousand dollars in principal during the biennium expiring March 31, 1951: *Provided, however,* That no sum in excess of one dollar per acre shall ever be paid or allowed either in cash, bonds, or otherwise, for any lands suitable for forest growth, but devoid of such, nor shall any sum in excess of three dollars per acre be paid or allowed either in cash, bonds, or otherwise, for any lands adequately restocked with young growth.

Any utility bonds issued under the provisions of this section may be retired from time to time, whenever there is sufficient money in the forest development fund, said bonds to be retired at the discretion of the

state forest board either in the order of issuance, or by first retiring bonds with the highest rate of interest. [1949 c 80 § 1; 1947 c 66 § 1; 1945 c 13 § 1; 1943 c 123 § 1; 1941 c 43 § 1; 1939 c 106 § 1; 1937 c 104 § 2; 1935 c 126 § 2; 1933 c 117 § 1; Rem. Supp. 1949 § 5812-11.]

Reviser's note: "chapter 154 of the Laws of 1923" was codified as RCW 43.64.010, 43.64.020, 43.12.140, 76.12.020, 76.12.030, 76.12.080, 76.12.090, 76.12.110, 76.12.120, 76.12.140 and 76.12.150.

Forest development fund: See note following RCW 76.12.030.

76.12.110 Forest development account. There is created a forest development account in the state general fund. The state treasurer shall keep an account of all sums deposited therein and expended or withdrawn therefrom. Any sums placed in the account shall be pledged for the purpose of paying interest and principal on the bonds issued by the board, and for the purchase of land for growing timber. Any bonds issued shall constitute a first and prior claim and lien against the account for the payment of principal and interest. No sums shall be withdrawn or paid out of the account except upon approval of the board.

Appropriations may be made by the legislature from the forest development account to the department of natural resources for the purpose of carrying on the activities of the department on county trust and fee title forest board lands. [1959 c 314 § 1; 1951 c 149 § 1; 1933 c 118 § 2; 1923 c 154 § 6; RRS § 5812-6.]

Reviser's note: See note following RCW 76.12.030.

76.12.120 Sales and leases of timber, timber land, etc.—Disposition of revenue. All land, acquired or designated by the board as state forest land, shall be forever reserved from sale, but the timber and other products thereon may be sold or the land may be leased in the same manner and for the same purposes as is authorized for state granted land if the board finds such sale or lease to be in the best interests of the state and approves the terms and conditions thereof.

All money derived from the sale of timber or other products, or from lease, or from any other source from the land, except where the Constitution of this state or RCW 76.12.030 requires other disposition, shall be disposed of as follows:

(1) Fifty percent shall be placed in the forest development fund.

(2) Fifty percent shall be paid to the county in which the land is located to be paid, distributed, and prorated to the various funds in the same manner as general taxes are paid and distributed during the year of payment. [1971 ex.s. c 123 § 4; 1955 c 116 § 1; 1953 c 21 § 1; 1923 c 154 § 7; RRS § 5812-7.]

Christmas trees—Cutting, breaking, removing: RCW 79.40.070 and 79.40.080.

Christmas trees—Exporting: Chapter 19.12 RCW.

Forest development fund: See note following RCW 76.12.030.

76.12.140 Logging of land—Rules and regulations—Penalty. Any lands acquired by the state under the provisions of *chapter 154, Laws of 1923, or any amendments thereto, shall be logged, protected and

cared for in such manner as to insure natural reforestation of such lands, and to that end the state forest board shall have power, and it shall be its duty to make rules and regulations, and amendments thereto, governing logging operations on such areas, and to embody in any contract for the sale of timber on such areas, such conditions as it shall deem advisable, with respect to methods of logging, disposition of slashings, and debris, and protection and promotion of new forests. All such rules and regulations, or amendments thereto, shall be adopted by majority vote of the state forest board by resolution and recorded in the minutes of the board, and shall be promulgated by publication in one issue of a newspaper of general circulation published at the state capitol, and shall take effect and be in force at the time specified therein. Any violation of any such rules and regulations shall be a gross misdemeanor. [1927 c 288 § 3, part (adding a new section to 1923 c 154 § 3a); RRS § 5812-3a. Prior: 1921 c 169 § 2.]

***Reviser's note:** "chapter 154, Laws of 1923", see note following RCW 76.12.100.

76.12.150 Report on suitable lands. The supervisor of forestry, the supervisor of reclamation, the supervisor of geology and the commissioner of public lands shall, on or before the first day of January of each year report to the state forest board any logged off lands, or deforested lands belonging to the state, or held in private ownership coming to their knowledge and observation during the preceding year of a character suitable for state forest lands or reforestation. [1923 c 154 § 8; RRS § 5812-8. Prior: 1921 c 169 § 4.]

Commissioner of public lands, powers and duties transferred: RCW 43.30.130.

Supervisor of geology: Chapter 43.27A RCW.

Supervisor of reclamation: Chapter 43.27A RCW.

76.12.155 Record of forest board proceedings, etc. The commissioner of public lands shall keep in his office in a permanent bound volume a record of all proceedings of the state forest board; and shall also keep a permanent bound record of all forest lands acquired by the state and any lands owned by the state and designated as such by the state forest board. The record shall show the date and from whom said lands were acquired; amount and method of payment therefor; the forest within which said lands are embraced; the legal description of such lands; the amount of money expended, if any, and the date thereof, for seeding, planting, maintenance or care for such lands; the amount, date and source of any income derived from such land; and such other information and data as may be required by the board. [1923 c 154 § 9; RRS § 5812-9. Formerly RCW 43.12.140.]

76.12.160 Sale or exchange of tree seedling stock and tree seed. The state supervisor of forestry is authorized to sell to or exchange with persons intending to restock forest areas, tree seedling stock and tree seed produced at the state nursery. [1947 c 67 § 1; Rem. Supp. 1947 § 5823-40.]

76.12.170 Use of proceeds specified. All receipts from the sale of stock or seed shall be deposited in a state forest nursery revolving fund to be maintained by the supervisor of forestry, who is hereby authorized to use all money in said fund for the maintenance of the state tree nursery or the planting of denuded state owned lands. [1947 c 67 § 2; RRS § 5823-41.]

Chapter 76.14 FOREST REHABILITATION

Sections

76.14.010	Definitions.
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76.14.130	Lands not to be included in project.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see note following Title 76 RCW digest.

76.14.010 Definitions. As used in this chapter:

The term "supervisor" means the supervisor of forestry;

The term "board" means the state forest board;

The term "owner" means and includes individuals, partnerships, corporations, associations, federal land managing agencies, state of Washington, counties, municipalities, and other forest land owners;

"Forest land" means any lands considered best adapted for the growing of trees. [1953 c 74 § 2.]

76.14.020 Yacolt burn designated high hazard area—Rehabilitation required. The Yacolt burn situated in Clark, Skamania, and Cowlitz counties in townships 2, 3, 4, 5, 6 and 7 north, ranges 3, 4, 5, 6, 7, 7 1/2 and 8 east is hereby designated a high hazard forest area requiring rehabilitation by the establishment of extensive protection facilities and by the restocking of denuded areas artificially to restore the productivity of the land. [1953 c 74 § 1.]

76.14.030 Administration. This chapter shall be administered by the division of forestry under the guidance and approval of the state forest board. [1953 c 74 § 3.]

76.14.040 Duties of supervisor. The supervisor shall use funds placed at his disposal to map, survey, fell snags, build firebreaks and access roads, increase forest protection activities and do all work deemed necessary to protect forest lands from fire in the rehabilitation

zone, and to perform reforestation and do other improvement work on state lands in the rehabilitation zone. [1955 c 171 § 1; 1953 c 74 § 4.]

76.14.050 Firebreaks—Powers of board and supervisor—Grazing lands. The supervisor is authorized to cooperate with owners of land located in this area in establishing firebreaks in their most logical position regardless of land ownership. The board may by gift, purchase, condemnation or otherwise acquire easements for road rights of way and land or interests therein located in the high hazard forest area for any purpose deemed necessary for access for forest protection, reforestation, development and utilization, and the supervisor shall have authority to regulate the use thereof. These roads shall not be used for any other purpose and when the landowner is using the land for agricultural grazing purposes the state shall maintain gates or adequate cattle guards at each place the road enters upon the private landowner's fenced lands. [1955 c 171 § 2; 1953 c 74 § 5.]

76.14.060 Powers and duties of supervisor—Private lands. The supervisor, subject to the guidance and approval of the board, shall have authority to acquire the right by purchase, condemnation or otherwise to cause snags on private land to be felled, slash to be disposed of, and to take such other measures on private land necessary to carry out the objectives of this chapter. [1955 c 171 § 3.]

76.14.070 Powers and duties of supervisor—Expenditure of public funds. The supervisor shall have authority subject to the guidance and approval of the board to expend public money for the purposes and objectives provided in this chapter. [1955 c 171 § 4.]

76.14.080 Fire protection projects—Assessments—Payment. The supervisor, with the guidance and approval of the board, shall develop fire protection projects within the high hazard forest area and shall determine the boundaries thereof in accordance with the lands benefited thereby and shall assess one-sixth of the cost of such projects equally upon all forest lands within the project on an acreage basis. Such assessment shall not, however, exceed twenty-five cents per acre annually nor more than one dollar and fifty cents per acre in the aggregate and shall constitute a lien upon any forest products harvested therefrom. The landowner may by written notice to the supervisor of forestry elect to pay his assessment on a deferred basis at a rate of ten cents per thousand board feet and/or one cent per Christmas tree when these products are harvested from the lands for commercial use until the assessment plus two percent interest from the date of completion of each project has been paid for each acre. Payments under the deferred plan shall be credited by forty acre tracts and shall be first applied to payment of the assessment against the forty acre tract from which the funds were derived and secondly to other forty acre tracts held and designated by the payor. In the event total ownership is less than forty acres then payment

shall be applied on an undivided basis to the entire areas as to which the assessment remains unpaid. The landowner who elects to pay on deferred basis may pay any unpaid assessment and interest at any time. [1955 c 171 § 5.]

76.14.090 Fire protection projects—Notice—Hearing. Notice of each project, the estimated assessment per acre and a description of the boundaries thereof shall be given by publication in a local newspaper of general circulation thirty days in advance of commencing work. Any person owning land within the project may within ten days after publication of notice demand a hearing before the supervisor in Olympia and present any reasons why he feels the assessment should not be made upon his land. Thereafter, the supervisor may change the boundaries of said project to eliminate land from the project which he determines in his discretion will not be benefited by the project. [1955 c 171 § 6.]

76.14.100 Fire protection projects—Collection of assessments. Except when the owner has notified the supervisor in writing that he will make payment on the deferred plan, the assessment shall be collected by the supervisor reporting the same to the county assessor of the county in which the property is situated upon completion of the work in that project and the assessor shall annually extend the amounts upon the tax rolls covering the property, and the amounts shall be collected in the same manner, by the same procedure, and with the same penalties attached as the next general state and county taxes on the same property are collected. Errors in assessments may be corrected at any time by the supervisor by certifying them to the treasurer of the county in which the land involved is situated. Upon the collection of such assessments the county treasurer shall transmit them to the supervisor. Payment on the deferred plan shall be made directly to the supervisor. Such payment must be made by January 31st for any timber or Christmas trees harvested during the previous calendar year and must be accompanied by a statement of the amount of timber or number of Christmas trees harvested and the legal description of the property from which they were harvested. Whenever an owner paying on the deferred plan desires to pay any unpaid balance or portion thereof, he may make direct payment to the supervisor. [1955 c 171 § 7.]

Collection of taxes: Chapter 84.56 RCW.

76.14.110 Fire protection projects—Credit on assessment for private expenditure. Where the supervisor finds that a portion of the work in any project, except road building, has been done by private expenditures for fire protection purposes only and that the work was not required by other forestry laws having general application, then the supervisor shall appraise the work on the basis of what it would have cost the state and shall credit the amount of the appraisal toward payment of any sums assessed against lands contained in the project and owned by the person or his predecessors in title making the expenditure. Such appraisal shall be

added to the cost of the project for purposes of determining the general assessment. [1955 c 171 § 8.]

76.14.120 Landowner's responsibility under other laws. This chapter shall not relieve the landowner of providing adequate fire protection for forest land pursuant to RCW 76.04.360, as amended, or in lieu thereof of paying the fire patrol assessment specified, but shall be deemed as providing solely for extra fire protection needed in the extrahazardous fire area. [1955 c 171 § 9.]

76.14.130 Lands not to be included in project. Projects pursuant to RCW 76.14.080 shall not be developed to include lands outside the following described boundary within the high hazard forest areas: Beginning at a point on the east boundary of section 24, township 4 north, range 4 east 1/4 mile south of the northeast corner; thence west 1/4 mile; south 1/16 mile; west 1/4 mile; north 1/16 mile; west 1/2 mile; south 1/8 mile; west 1/4 mile; south 1/8 mile; west 1/2 mile; south 1/16 mile; west 1/8 mile; south 1/16 mile; west 1/8 mile; south 1/16 mile; west 1/2 mile; south 1/16 mile; west 3/4 mile; north 1/16 mile; west 1/4 mile; north 1/16 mile; west 1/2 mile; north 1/16 mile; west 1/4 mile; north 1/16 mile; west 1 3/4 miles to the west quarter corner of section 19, township 4 north, range 4 east. Thence north 1/4 mile; west 1/4 mile; north 1/8 mile; west 1/8 mile; north 1/8 mile; west 1/16 mile; north 1/4 mile; west 1/16 mile; north 1/8 mile; west 1/8 mile; north 1/8 mile; west 3/16 mile; south 1/8 mile; west 3/16 mile; south 1/8 mile; east 3/16 mile; south 1/4 mile; west 2 3/16 miles; south 1/8 mile; west 1/8 mile; south 1/4 mile; east 1/8 mile; south 1/16 mile; east 1/4 mile; south 3/16 mile; east 3/8 mile; south 1/8 mile; east 1/8 mile; south 1/16 mile; east 3/16 mile; south 7/16 mile; west 3/16 mile; south 1/4 mile; west 3/16 mile; south 1/4 mile; east 15/16 mile; south 1/4 mile; east 1/4 mile; south 1/4 mile; east 1/4 mile; south 3/4 mile; to the southwest corner of section 36, township 4 north, range 3 east. Thence west 3/8 mile; south 1/8 mile; east 1/8 mile; south 1/2 mile; west 1/8 mile; south 3/8 mile; west 1/8 mile; south 1/4 mile; west 1/4 mile; south 1/2 mile; west 1/8 mile; south 1/4 mile; east 3/8 mile; south 7/16 mile; west 1/4 mile; south 1/16 mile; west 1/4 mile; south 1/2 mile; west 1/8 mile; south 1/4 mile; east 1/8 mile; south 1/16 mile; west 1/4 mile; south 1/4 mile; east 1/2 mile; south 3/16 mile; east 1/4 mile; south 1/16 mile; east 7/16 mile; south 3/16 mile; east 9/16 mile; south 1/4 mile; east 1/16 mile; south 1/4 mile; east 1/16 mile; south 1/8 mile; east 1/8 mile; south 1/8 mile; west 1/16 mile; south 5/8 mile; west 3/16 mile; south 1/16 mile; east 1/4 mile; south 1/16 mile; east 1/8 mile; south 3/16 mile; west 1/8 mile; south 1/16 mile; west 11/16 mile; south 3/16 mile; east 15/16 mile, being 1/16 mile north of the southeast corner of section 36, township 3 north, range 3 east. Thence east 1 mile; south 1/16 mile; west 7/8 mile; south 1/8 mile; east 1/4 mile; south 1/4 mile; west 1/8 mile; south 1/8 mile; west 3/16 mile; south 1/4 mile; west 7/16 mile; north 1/8 mile; west 1/8 mile; south 1/8 mile; west 5/16 mile; south 1/4 mile; west 3/16 mile; south 1/16

mile; east 1/2 mile; north 1/16 mile; east 1/4 mile; south 1/8 mile; east 1/8 mile; north 1/8 mile; east 1/8 mile being the southeast corner of section 1, township 2 north, range 3 east. Thence south 1/4 mile; east 1/4 mile; south 1/16 mile; east 1/4 mile; south 1/16 mile; east 1/4 mile; south 1/8 mile; east 1/8 mile; north 1/8 mile; east 3/8 mile; south 1/8 mile; east 1/16 mile; north 1/4 mile; east 7/16 mile; north 1/8 mile; east 9/16 mile; south 1/4 mile; west 1/16 mile; south 1/8 mile; west 1/8 mile; south 1/8 mile; west 1/8 mile; south 1/8 mile; west 1/16 mile; south 1/4 mile; west 1/16 mile; south 1/8 mile; west 1/8 mile; south 1/16 mile; west 1/4 mile; south 5/16 mile; to the center of section 17, township 2 north, range 4 east. Thence east 1 mile; south 1/16 mile; east 2 miles; north 1/16 mile; east 1 1/2 miles; to the east quarter corner of section 13, township 2 north, range 4 east. Thence easterly 9 miles following Bonneville Power Administration's power transmission line through sections 18, 17, 16, 15, 14 and 13, township 2 north, range 5 east and sections 18, 17 and 16, township 2 north, range 6 east to the southeast corner of section 16, township 2 north, range 6 east. Thence easterly 3 3/4 miles; north 1 1/4 miles; east 1/4 mile; north 2 1/4 miles; west 3/4 mile; north 1 1/2 miles; east 3/4 mile; north 1/2 mile; east 1 mile; north 1/2 mile; east 1 mile; north 1 mile; east 2 miles; south 1 mile; east 1 mile; north 3 miles; to the northeast corner of section 1, township 3 north, range 7 east. Thence west 4 miles; south 1 mile; west 2 miles; north 1/2 mile; west 2 miles; south 1/2 mile; west 1 mile; south 1/2 mile; west 2 miles; north 1 1/2 miles; west 1 mile; south 1 mile; west 2 miles; south 1 1/2 miles; east 1 mile; south 1/2 mile; west 1 mile; south 1/2 mile; west 1/2 mile; south 1/2 mile; west 3 1/2 miles to the northwest corner of section 30, township 3 north, range 5 east. Thence north along Gifford Pinchot National Forest boundary to the point of beginning. [1955 c 171 § 10.]

Chapter 76.16

ACCESS TO STATE TIMBER AND OTHER VALUABLE MATERIAL

Sections

- 76.16.010 Acquisition of property interests for access authorized—Maintenance.
 76.16.020 Condemnation—Duty of attorney general.
 76.16.030 Disposal of property interests acquired under this chapter.
 76.16.040 Acquisition—Payment—Moneys available to department.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see note following Title 76 RCW digest.

76.16.010 Acquisition of property interests for access authorized—Maintenance. Whenever the department of natural resources, hereinafter referred to as the department, shall find it to be for the best interests of the state of Washington to acquire any property or use of a road in private ownership to afford access to state timber and other valuable material for the purpose of developing, caring for or selling the same, the acquisition of such property, or use thereof, is hereby declared to

be necessary for the public use of the state of Washington, and said department is hereby authorized to acquire such property or the use of such roads by gift, purchase, exchange or condemnation, and subject to all of the terms and conditions of such gift, purchase, exchange or decree of condemnation to maintain such property or roads as part of the department's land management road system. [1963 c 140 § 1; 1945 c 239 § 1; Rem. Supp. 1945 § 5823–30.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9); chapter 8.04 RCW.

State lands subject to easements for removal of materials: RCW 79.01.312 and 79.36.230.

76.16.020 Condemnation—Duty of attorney general. The attorney general of the state of Washington is hereby required and authorized to condemn said property interests found to be necessary for the public purposes of the state of Washington, as provided in RCW 76.16.010, and upon being furnished with a certified copy of the resolution of the department, describing said property interests found to be necessary for the purposes set forth in RCW 76.16.010, the attorney general shall immediately take steps to acquire said property interests by exercising the state's right of eminent domain under the provisions of chapter 8.04 RCW, and in any condemnation action herein authorized, the resolution so describing the property interests found to be necessary for the purposes set forth above shall, in the absence of a showing of bad faith, arbitrary, capricious or fraudulent action, be conclusive as to the public use and real necessity for the acquisition of said property interests for a public purpose, and said property interests shall be awarded to the state without the necessity of either pleading or proving that the department was unable to agree with the owner or owners of said private property interest for its purchase. Any condemnation action herein authorized shall have precedence over all actions, except criminal actions, and shall be summarily tried and disposed of. [1963 c 140 § 2; 1945 c 239 § 2; Rem. Supp. 1945 § 5823–31.]

76.16.030 Disposal of property interests acquired under this chapter. In the event the department should determine that the property interests acquired under the authority of this chapter are no longer necessary for the purposes for which they were acquired, the department shall dispose of the same in the following manner, when in the discretion of the department it is to the best interests of the state of Washington to do so, except that property purchased with educational funds or held in trust for educational purposes shall be sold only in the same manner as are public lands of the state:

(1) Where the state property necessitating the acquisition of private property interests for access purposes under authority of this chapter is sold or exchanged, said acquired property interests may be sold or exchanged as an appurtenance of said state property when it is determined by the department that sale or exchange of said state property and acquired property interests as one parcel is in the best interests of the state.

(2) If said acquired property interests are not sold or exchanged as provided in the preceding subsection, the department shall notify the person or persons from whom the property interest was acquired, stating that said property interests are to be sold, and that said person or persons shall have the right to purchase the same at the appraised price. Said notice shall be given by registered letter or certified mail, return receipt requested, mailed to the last known address of said person or persons. If the address of said person or persons is unknown, said notice shall be published twice in an official newspaper of general circulation in the county where the lands or a portion thereof is located. The second notice shall be published not less than ten nor more than thirty days after the notice is first published. Said person or persons shall have thirty days after receipt of the registered letter or five days after the last date of publication, as the case may be, to notify the department, in writing, of their intent to purchase the offered property interest. The purchaser shall include with his notice of intention to purchase, cash payment, certified check or money order in an amount not less than one-third of the appraised price. No instrument conveying property interests shall issue from the department until the full price of the property is received by said department. All costs of publication required under this section shall be added to the appraised price and collected by the department upon sale of said property interests.

(3) If said property interests are not sold or exchanged as provided in the preceding subsections, the department shall notify the owners of land abutting said property interests in the same manner as provided in the preceding subsection and their notice of intent to purchase shall be given in the manner and in accordance with the same time limits as are set forth in the preceding subsection (2): *Provided*, That if more than one abutting owner gives notice of intent to purchase said property interests the department shall apportion them in relation to the lineal footage bordering each side of the property interests to be sold, and apportion the costs to the interested purchasers in relation thereto: *Provided further*, That no sale is authorized by this section unless the department is satisfied that the amounts to be received from the several purchasers will equal or exceed the appraised price of the entire parcel plus any costs of publishing notices.

(4) If no sale or exchange is consummated as provided in subsections (1), (2) and (3) hereof, the department shall sell said properties in the same manner as public lands of the state of Washington are sold.

(5) Any disposal of property interests authorized by this chapter shall be subject to any existing rights previously granted by the department. [1963 c 140 § 3; 1945 c 239 § 3; Rem. Supp. 1945 § 5823-32.]

Reviser's note: The powers and duties of the "director of highways" referred to herein have been transferred to the state highway commission by 1951 c 247 § 4 (RCW 43.27.100).

76.16.040 Acquisition—Payment—Moneys available to department. The department in acquiring any property interests under the provisions of this

chapter, either by purchase or condemnation, is hereby authorized to pay for the same out of any moneys available to the department of natural resources for this purpose. [1963 c 140 § 4; 1945 c 239 § 4; Rem. Supp. 1945 § 5823-33.]

Chapter 76.20 FIREWOOD ON STATE LANDS

Sections	
76.20.010	Annual license to remove firewood authorized.
76.20.020	Removal only for personal use.
76.20.030	Issuance of license—Fee—Limit on amount removed.
76.20.040	Penalty.

76.20.010 Annual license to remove firewood authorized. The commissioner of public lands may issue annual licenses to residents of this state who are citizens of the United States or have declared their intention to become such to enter upon lands belonging to the state for the purpose of removing therefrom dead timber which is unfit for any purpose except to be used as firewood. [1945 c 97 § 1; Rem. Supp. 1945 § 7797-40a.]

Reviser's note: The powers and duties of the "commissioner of public lands" referred to herein have been transferred to the department of natural resources by 1957 c 38 § 13 (RCW 43.30.130).

76.20.020 Removal only for personal use. In addition to other matters which may be required to be contained in the application for a license under this chapter the applicant must certify that the wood so removed is to be only for his own personal use and in his own home and that he will not dispose of it to any other person. [1945 c 97 § 2; Rem. Supp. 1945 § 7797-40b.]

76.20.030 Issuance of license—Fee—Limit on amount removed. The application may be made to the commissioner of public lands or his duly qualified representative for that purpose, and if deemed proper, the license may be issued upon the payment of one dollar which shall be paid into the treasury of the state by the officer collecting the same and placed in the state general fund; the license shall be dated as of the date of issuance and authorize the holder thereof to remove between the dates of October 15th and February 15th of the following year not more than twelve cords of wood not fit for any use but as firewood for the use of himself and family from the premises described in the license under such regulations as the commissioner of public lands may prescribe. [1945 c 97 § 3; Rem. Supp. 1945 § 7797-40c.]

Reviser's note: "commissioner of public lands", see note following RCW 76.20.010.

76.20.040 Penalty. Any false statement made in the application or any violation of the provisions of this chapter shall constitute a gross misdemeanor and be punishable as such. [1945 c 97 § 4; Rem. Supp. 1945 § 7797-40d.]

**Chapter 76.24
TOLL LOGGING ROADS**

Sections

- 76.24.010 Corporations may construct and operate—Powers.
- 76.24.020 Types of facilities enumerated.
- 76.24.030 Duties as carrier—Tolls—Lien.
- 76.24.040 Eminent domain—Reverter for nonuse.

76.24.010 Corporations may construct and operate—Powers. Any two or more persons may incorporate a company, having for its principal object the construction, maintenance and operation of logging roads, chutes, flumes and artificial water courses, or water ways and other ways, for the transportation of logs and other timber products. Such corporation shall have power to acquire, hold, use and transfer all such real and personal property as shall be reasonably necessary for carrying on the business of such corporation. [1905 c 82 § 1; RRS § 8395.]

76.24.020 Types of facilities enumerated. Such corporation shall have power to build, construct, maintain and operate logging roads, whether skid roads, railroads or any other kind, also chutes, flumes and artificial water courses, water ways and other ways, for the transportation of logs or any other timber products, together with all necessary yarding grounds, rollways and landings. [1905 c 82 § 2; RRS § 8396.]

76.24.030 Duties as carrier—Tolls—Lien. After any such logging road, way, chute, flume or artificial water course or other improvements shall have been constructed, such company shall transport all timber products offered to it for carriage as its means of transportation are adapted to carry, and such company shall have the right to charge reasonable tolls for the use thereof, which tolls shall be uniform, having due regard to the portion or length of any such logging road, way, chute, flume, or artificial water course or other improvements used by any person. Such company shall have a lien for the amount of its reasonable tolls and charges upon any and all logs or other timber products transported by it over its logging road, way, chute, flume or artificial water course. Notice of such lien shall be filed, and the same shall be foreclosed as provided by chapter 60.10 RCW and RCW 61.12.162. [1969 c 82 § 16; 1905 c 82 § 3; RRS § 8397.]

Labor liens: Chapter 60.32 RCW.

Lien for labor and services on timber and lumber: Chapter 60.24 RCW.

76.24.040 Eminent domain—Reverter for nonuse. Such companies shall be deemed quasi public companies and common carriers, and any such company shall have the right of eminent domain and shall have the right to appropriate and condemn lands and property for its use. Such right of condemnation and of eminent domain shall be exercised in the same manner as is now, or may hereafter be, provided by law for the condemnation of property by ordinary railroad corporations exercising the right of eminent domain: *Provided*, That the right of eminent domain shall not be exercised by any such corporation with respect to any residence.

And provided further, That any property acquired by such corporation under the provisions of this chapter by the exercise of the right of eminent domain shall be used exclusively for the purposes of this chapter; and whenever the use of such property as herein contemplated shall cease for the period of one year, the property shall revert to the original owner, his heirs or assigns. Nothing in this chapter shall be construed to authorize the taking or damaging of any power plant constructed or being constructed for the creation or utilization of water power. [1905 c 82 § 4; RRS § 8398.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9); chapter 8.20 RCW.

**Chapter 76.28
BOOM COMPANIES**

Sections

- 76.28.010 Acquisition of property for booming, etc.—Eminent domain.
- 76.28.020 Plat or survey to be filed.
- 76.28.030 Boom facilities—Restrictions.
- 76.28.040 Tolls—Duty of company—Lien.
- 76.28.050 Duty in assorting products.
- 76.28.060 Record of rafts.
- 76.28.070 Liability for loss or damage.
- 76.28.080 Additional liability for failure to assort and deliver.
- 76.28.090 Certain waters declared public highways—Boom companies declared public corporations.

Corporations and associations (Profit): Title 23A RCW.

Log patrol activities, duties concerning: Chapter 76.40 RCW.

76.28.010 Acquisition of property for booming, etc.—Eminent domain. Any corporation heretofore or hereafter organized in the state of Washington for the purpose of catching, booming, sorting, rafting and holding logs, lumber or other timber products, shall have power to acquire, hold, use and transfer all such real and personal property or estate, by lease or purchase, as shall be necessary for carrying on the business of said corporation. If such corporation shall not be able to agree with persons owning land, shore rights, or other property sought to be appropriated, as to the amount of compensation to be paid therefor, the compensation therefor may be assessed and determined and the appropriation made in the manner provided by law for the appropriation of private property by railways: *Provided*, That any property acquired under the provisions of this chapter by the exercise of the right of eminent domain shall be used exclusively for the purposes of this chapter; and whenever the use of said property as herein contemplated shall cease for a period of one year, the same shall revert to the original owner, his heirs or assigns, upon the repayment of the original cost of same. [1890 p 470 § 1; RRS § 8399.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9); chapter 8.20 RCW.

76.28.020 Plat or survey to be filed. Any corporation hereafter organized for the purpose mentioned in RCW 76.28.010, shall within ninety days after its articles of incorporation have been filed, file in the office of the supervisor of forestry a plat or survey of so much of the

shore lines of the waters of the state and lands contiguous thereto as are proposed to be appropriated by the corporation. Such plat shall be made from the records of the United States Surveyor General, or by a competent surveyor, after actual survey. The corporation may from time to time whenever it desires to extend its operations to portions of streams not embraced in its original plat, or to other streams tributary to the stream or streams described in the original plat, or any portion of such streams, or in any manner to change, modify, or correct its original plat, file additional plats or surveys in the office of the supervisor of forestry, of so much of the shore lines of the waters of the state and lands contiguous thereto as are proposed to be appropriated for such purposes. Whenever, by reason of floods or otherwise, the channel of any stream is so changed as to put the stream beyond the limits of the original plat, or any supplemental or additional plat filed pursuant to the provisions of this section, the corporation may file in the office of the supervisor of forestry additional plats or surveys showing the change in the channel and so much of the shore lines of the waters of the state and lands contiguous thereto as are proposed to be appropriated for its purposes by the corporation, which shall vest it with the same rights that it acquired by the filing of the original plat. [1957 c 33 § 1; 1907 c 52 § 1; 1890 p 470 § 2; RRS § 8400.]

Reviser's note: The 1957 amendment of this section transferred the functions of the secretary of state to the supervisor of forestry; however, chapter 38, Laws of 1957 transfers the functions relating to booming companies to the newly created department of natural resources, see chapter 43.30 RCW, particularly RCW 43.30.110, 43.30.070, 43.30.080.

76.28.030 Boom facilities—Restrictions. Such corporations shall have power and are hereby authorized, in any of the waters of this state or the dividing waters thereof, to construct, maintain and use all necessary sheer or receiving booms, dolphins, piers, piles or other structure necessary or convenient for carrying on the business of such corporations: *Provided*, That such boom or booms, sheer booms or receiving booms shall be so constructed as to allow the free passage between any of such booms and the opposite shore for all boats, vessels or steam crafts of any kind whatsoever, or for ordinary purposes of navigation. [1890 p 471 § 3; RRS § 8401.]

76.28.040 Tolls—Duty of company—Lien. After such works have been constructed, the corporation shall catch, hold, and assort the logs and timber products of all persons requesting such service, upon the same terms and without discrimination. It shall have the right, in consideration of the convenience and security afforded to the public in the handling of logs and timber products, to charge and collect tolls on all logs or other timber products caught within its works and upon the order or request of the owner or owners thereof, and there assorted, boomed, or rafted. The tolls shall not exceed one dollar and fifty cents per thousand feet on logs, spars, or other large timber, and reasonable rates on all other timber products. A corporation operating a boom at the mouth of any river, shall catch and hold,

assort, boom, and raft all logs and timber products, except such as may be already in charge of the owner or his agents, without request of the owner, and it shall have the right to charge and collect tolls not to exceed one dollar and fifty cents per thousand feet for such service. The amount of logs or timber is to be board measure, to be ascertained by the usual legal method of scaling. The corporation shall have a lien upon the logs and timber products for the driving, floating, booming, sorting, and rafting thereof, and the right to foreclose such lien as provided in chapter 60.10 RCW and RCW 61.12.162. The corporation shall, as soon as practicable, deliver logs or other timber products caught within its booms, sorted and rafted ready for towing, to the owner thereof, and if required to hold such property for more than thirty days, shall have the right to charge a reasonable rate for such storage for the excess period. [1969 c 82 § 17; 1953 c 123 § 1; 1890 p 471 § 4; RRS § 8402.]

Lien for labor and services on timber and lumber: Chapter 60.24 RCW.

Liens, generally: Title 60 RCW.

76.28.050 Duty in assorting products. It shall be the duty of all said boom corporations, in assorting, to separate the logs, lumber or other timber products into separate booms ready for towing, so that logs or other timber products shall go to the mill or place intended for use or storage in one or more booms: *Provided*, That in case more than one boom is located on or in the same river or its tributaries, the corporation owning the upper boom or works shall pass free of charge all saw logs or other timber products consigned to the lower boom or booms. [1890 p 472 § 5; RRS § 8403.]

76.28.060 Record of rafts. It shall be the duty of every corporation organized and transacting business under the provisions of this chapter to keep in the office of its secretary, open to public inspection, a book or books in which shall be truly recorded the facts, so far as known, regarding each and every raft by it assorted. Such record shall specify: (1) Names of owners; (2) marks or brands; (3) number of logs in each boom; (4) number of feet in boom; (5) name of steamer receiving possession; (6) date of departure from boom. [1890 p 472 § 6; RRS § 8404.]

76.28.070 Liability for loss or damage. Corporations organized in accordance with the provisions of this chapter shall be liable to the owner or owners of logs or other timber products for all loss or damage resultant from neglect, carelessness or unnecessary delay on the part of servants of such corporations: *Provided*, That loss caused by fire and ice, which cannot be reasonably guarded against, shall not be construed as resultant upon neglect or carelessness on the part of the corporation. [1890 p 472 § 7; RRS § 8405.]

76.28.080 Additional liability for failure to assort and deliver. In addition to such damages as are herein provided for any corporation wilfully neglecting to assort and deliver such logs and timber products according to

the provisions of this chapter, it shall be liable to a fine not exceeding twenty percent of the value of such property which it shall have failed to deliver, but no such corporation shall be liable to such damages or penalty if said owner or owners of such logs or timber products shall have failed to furnish the necessary boom sticks and chains to raft the same. [1890 p 472 § 8; RRS § 8406.]

76.28.090 Certain waters declared public highways—Boom companies declared public corporations. All meandered rivers, meandered sloughs and navigable waters in this state shall be deemed as public highways, and said corporations shall be declared public corporations for the purpose of this chapter; and the improvement of such streams, sloughs and waters shall be deemed and declared a public use and benefit. [1890 p 473 § 9; RRS § 8407.]

Chapter 76.32 LOG DRIVING COMPANIES

Sections

76.32.010	Formation of—Object.
76.32.020	Acquisition of property—Eminent domain.
76.32.030	Plat or survey to be filed.
76.32.040	General powers and duties—Improvement of streams—Remonstrances.
76.32.050	Duty to drive timber products—Tolls—Liens.
76.32.060	Liability for loss or damage.
76.32.070	Rights to cease, when.
76.32.080	Boom companies may come under chapter.

Corporations and associations (Profit): Title 23A RCW.

76.32.010 Formation of—Object. Any corporation having for its object, in whole or in part, the clearing out and improvement of rivers and streams in this state, and for the purpose of driving, sorting, holding and delivering logs and other timber products thereon, may be organized under the laws of this state, and in accordance with the provisions of the codes and statutes of Washington, as set down and numbered in volume 1 of Hill's Annotated Statutes and Codes of Washington, sections 1497 to 1520, inclusive, and such corporations shall have all powers and be subject to all the liabilities and duties therein mentioned. [1895 c 72 § 1; RRS § 8408.]

Reviser's note: Sections 1497 to 1520, Hill's Annotated Statutes and Codes, formed a part of the general corporation laws existing at the time of enactment of this section. Current laws on the subject matter now appear in Title 23A RCW.

76.32.020 Acquisition of property—Eminent domain. Such corporation shall have power to acquire, hold, use and transfer all such real and personal property or estate, by lease or purchase, as shall be necessary for carrying on the business of said corporation. If such corporation shall not be able to agree with persons owning land, shore rights or other property sought to be appropriated, as to the amount of compensation to be paid therefor, the compensation therefor may be assessed and determined and the appropriation thereof be made in the manner provided by law for the appropriation of private property in chapter 6 of title 9, volume 2,

Hill's Annotated Statutes and Codes of Washington: *Provided*, That any property acquired under the provisions of this chapter for the purposes herein mentioned by the exercise of the right of eminent domain shall be used exclusively for the purposes aforesaid; and whenever the use of said property acquired by the right of eminent domain, as herein contemplated, shall cease for a period of one year, the same shall revert to the original owner, his heirs or assigns. [1895 c 72 § 2; RRS § 8409.]

Reviser's note: "chapter 6 of title 9, volume 2, Hill's Annotated Statutes and Codes of Washington" is codified as RCW 8.20.010 through 8.20.140.

76.32.030 Plat or survey to be filed. Any corporation organized under this chapter shall within ninety days after its articles of incorporation have been filed, file in the office of the supervisor of forestry a plat or survey of so much of the shore lines of the waters of the state or of any of the rivers or streams thereof and lands contiguous thereto as are proposed to be appropriated by the corporation. Such plat shall be made from the records of the United States Surveyor General or by a competent surveyor, after actual survey. The corporation may from time to time whenever it desires to extend its operations to portions of streams not embraced in its original plat, or to other streams tributary to the stream or streams described in the original plat, or any portion of such streams, file additional plats in the office of the supervisor of forestry. Whenever by reason of floods or otherwise, the channel of any stream is so changed as to put the stream beyond the limits of the original plat, or any supplemental or additional plat filed pursuant to the provisions of this section, the corporation may file in the office of the supervisor of forestry supplemental plats showing the change in the channel which shall vest it with the same rights that it acquired by the filing of the original plat. [1957 c 34 § 1; 1905 c 119 § 1; 1895 c 72 § 3; RRS § 8410.]

Reviser's note: The 1957 amendment of this section transferred the functions of the secretary of state to the supervisor of forestry; however, chapter 38, Laws of 1957 transferred the functions relating to log driving companies to the newly created department of natural resources, see chapter 43.30 RCW, particularly RCW 43.30.110, 43.30.070, 43.30.080.

76.32.040 General powers and duties—Improvement of streams—Remonstrances. Such corporation shall have power and is hereby authorized in any of the rivers and streams of this state, or the dividing waters thereof, to remove jams, roots, snags and rocks, improve and straighten the channel, build wing dams and sheer booms, construct dams and gates, or otherwise, for the purpose of storing water with which to produce artificial freshets and for the purpose of holding logs and other timber products and in all ways to improve such streams and rivers for the purposes herein mentioned and contemplated. *Provided*, That no such wing dam, sheer boom, dam with gate or otherwise, shall be so constructed, maintained or used as to in any manner obstruct or impede the outlet of such stream: *And provided further*, That if any such wing dam, sheer boom, dam with gate or otherwise shall be so constructed,

maintained or used as to interfere with the use for any purpose of the waters of any stream so dammed or used, or any of its tributaries, or in any manner to injure or damage any lands adjacent to such stream or its tributaries, compensation for such interference with the use of such water and for any such injury or damage shall be first assessed and determined and the appropriation thereof may be made by the exercise of the power of eminent domain in the manner provided in RCW 76.32.020: *Provided, however,* That whenever the owners of more than one-half of the land lying alongside or abutting on any stream affected by the tide, proposed to be improved according to this chapter, shall file with the board of county commissioners of the county in which said river is situated a remonstrance against any improvements of so much of the stream as is affected by the tide, it shall then be unlawful for any corporation to take the land or any slough within the territory owned by any such remonstrancers: *Provided,* That such remonstrance shall be filed with said board within fifteen days from the filing of said plat. Nothing in this chapter shall be construed to authorize the taking or damaging of any power plant constructed or being constructed for the creation or utilization of water power. [1905 c 57 § 1; 1897 c 31 § 1; 1895 c 72 § 4; RRS § 8411.]

76.32.050 Duty to drive timber products—Tolls—Liens. After such corporation has entered upon its duties, which shall be within three months of the filing of its maps of location, it shall operate in streams theretofore navigable, upon the request of the owners, and in the case of logs and other timber products which are commingled, or lying in such a position as to obstruct or impede the drive, without such request. When a navigable stream upon which it was not previously practicable to float logs or other timber products is improved by clearing out rocks, straightening the channel, or constructing wing dams and sheers, thereby aiding and assisting the floating of logs and other timber products, the corporation shall be entitled to driving charges on all logs or other timber products placed in the stream without a request to drive them, and in streams not navigable before such improvements were made, it shall without request, sluice, sack, and drive all logs and other timber products of suitable length that may be placed in the stream so improved, or that may be delivered into its ponds.

It shall handle all such logs and other timber products of all persons upon the same terms, without discrimination as to time of sluicing, sacking, and driving.

It shall be entitled to charge and collect reasonable and uniform tolls for such services and improvements, on all logs and other timber products handled, or sheered out of sloughs or off the bars by means of the improvements. Such tolls shall not exceed two dollars per thousand feet, board measure, on logs, spars or other large timber, and reasonable compensation on all other timber products, such charges to be fixed by the board of trustees of the corporation in proportion to the distance the timber is to be driven and the number of dams through which it is necessarily sluiced or sheered.

In case the corporation is also engaged in the booming and rafting of logs and other timber so sluiced, sacked, and driven, an additional sum not to exceed one dollar and twenty cents per thousand feet for logs, spars and other large timber, and reasonable compensation on all other timber products may be charged for the booming and rafting.

The amount of such logs and other products shall be determined by the usual method of scaling, and the corporation shall have a lien upon all logs and other timber products handled for sluicing, sacking, and driving, and for booming and rafting to be foreclosed as provided in chapter 60.10 RCW and RCW 61.12.162. [1969 c 82 § 18; 1953 c 124 § 1; 1909 c 229 § 1; 1901 c 140 § 1; 1895 c 72 § 5; RRS § 8412.]

76.32.060 Liability for loss or damage. Any corporation acting under and in accordance with the provisions of this chapter shall be liable to the owner or owners of logs or other timber products for all loss or damage resulting from neglect, carelessness or unnecessary delay on the part of such corporation or its agents. [1895 c 72 § 6; RRS § 8413.]

76.32.070 Rights to cease, when. Should any corporation neglect, for the period of eight months after improving any stream or river, to operate its dams, or to otherwise perform its duties as herein provided, then all rights herein conferred to such corporations upon such streams or rivers, or portions thereof, shall cease. [1895 c 72 § 7; RRS § 8414.]

76.32.080 Boom companies may come under chapter. Duly organized boom companies at present operating upon any of the streams or rivers of this state may file amended articles of incorporation to embrace the provisions of this chapter, and, for the purpose of time limitations mentioned in this chapter, the time of filing such amended articles of incorporation shall be deemed to be the time of organization thereof, but failure to comply with the provisions of this chapter shall work forfeiture of the rights of such corporations only so far as the same are subjoined under the provisions of this paragraph. [1895 c 72 § 8; RRS § 8415.]

Chapter 76.36 MARKS AND BRANDS

Sections	
76.36.010	Definitions.
76.36.020	Forest products and equipment to be marked.
76.36.030	Registration of marks or brands.
76.36.040	Assignment.
76.36.050	Certificate as evidence of registration and ownership.
76.36.060	Impression of mark—Presumption.
76.36.070	Cancellation of registration.
76.36.090	Catch brands.
76.36.100	Right of entry to retake branded products.
76.36.110	Penalties for false branding, etc.
76.36.120	Forgery of mark, etc.—Penalty.
76.36.130	Sufficiency of mark.
76.36.140	Application of chapter to eastern Washington.
76.36.150	Renewal of marks or brands—Effect of failure to renew—Abandoned marks or brands.
76.36.160	Deposit of fees.
76.36.900	Severability—1925 ex.s. c 154.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see note following Title 76 RCW digest.

76.36.010 Definitions. The words and phrases herein used, unless the same be clearly contrary to or inconsistent with the context of this chapter or the section in which used, shall be construed as follows:

(1) "Person" shall include the plural and all corporations, foreign and domestic, copartnerships, firms and associations of person.

(2) "Waters of this state" shall include any and all bodies of fresh and salt water within the jurisdiction of the state capable of being used for the transportation of forest products, and all rivers and lakes and their tributaries, harbors, bays, bayous and marshes.

(3) "Forest products" shall be taken to mean and include logs, spars, piles, and poles, boom sticks and shingle bolts and every form into which a fallen tree may be cut before it is manufactured into lumber or run through a sawmill, shingle mill or tie mill, or cut into cord wood, stove wood or hewn ties.

(4) "Catch brand" shall be taken to mean a mark or brand used by a person as an identifying mark upon forest products and booming equipment previously owned by another.

(5) "Booming equipment" shall include boom sticks and boom chains. [1925 ex.s. c 154 § 1; RRS § 8381-1.]

76.36.020 Forest products and equipment to be marked. Every person who shall put into any of the waters of this state, or ship on any common carrier railroad for the purpose of floating or rafting in any of said waters, any forest products, or use any booming equipment as a part of his operation in securing, rafting or floating forest products, shall have a mark or brand, previously selected by him and registered in the manner hereinafter provided, plainly impressed or cut in a conspicuous place on each stick or piece of forest products so shipped on any common carrier railroad or put into any of said waters and on each piece of booming equipment so used. [1925 ex.s. c 154 § 2; RRS § 8381-2. Prior: 1890 p 110 § 1.]

76.36.030 Registration of marks or brands. Every person selecting a mark or brand, before using it, shall make application for the registration thereof in the office of the supervisor of forestry by depositing in that office an impression burned in a piece of leather of appropriate size, or a drawing thereof, together with, in duplicate a written statement duly signed and verified by him or his agent, containing a description of the mark or brand and declaring that such mark or brand is not, and at the time of its adoption by him was not, in use, to his knowledge, by any other person, and that he has selected it in good faith for marking or branding forest products to be transported on common carrier railroads, or floated or rafted in the waters of this state, or booming equipment to be used by him as a part of his operations in securing, rafting, or floating forest products.

The supervisor of forestry, upon receipt of the application and the fee hereinafter provided, if he finds that the mark or brand is not identical with any other mark or brand registered in his office, or does not so closely resemble one registered therein as to be confounded therewith, shall file in his office the impression or drawing, and one copy of the written statement, and shall register the mark or brand in a book to be provided by him and kept for the purpose and known as the "Forest products brand register," entering therein the name of the owner, character of the mark or brand, date of registration, and such other details as he may see fit to enter therein. He shall return to the applicant the other copy of the written statement, with a certificate attached thereto and signed by him or his deputy to the effect that the mark or brand has been duly registered in accordance with the provisions of this chapter, and that the applicant is the registered owner thereof. The supervisor of forestry, in the event of his refusal to register a mark or brand on account of conflict with, or resemblance to, one already registered, shall immediately give notice of that fact to the applicant, who may select another mark or brand, and apply for its registration in the manner of an original application. [1957 c 36 § 1; 1925 ex.s. c 154 § 3; RRS § 8381-3. Prior: 1890 p 110 §§ 2, 3.]

76.36.040 Assignment. Every mark or brand registered under this chapter, shall be assignable in law; and the supervisor of forestry, upon presentation to him, in duplicate, of an assignment transferring the mark or brand to a person therein named and duly executed and acknowledged by the owner thereof and the payment of the fee hereinafter mentioned, shall file one copy of the assignment in his office and make an entry in the forest products brand register of the fact of the assignment, the date thereof and the name of the assignee, and such other details as he may see fit to enter therein. He shall then return to the assignee the other copy of the assignment, with a certificate attached thereto and signed by him or his deputy to the effect that the mark or brand has been duly registered in accordance with the provisions of this chapter and assigned to the assignee, and that the assignee is the registered owner thereof. The assignee, upon the due registration of the assignment, shall be and become the owner of the mark or brand with the full right of exclusive use to the same extent as though he had been the original owner. [1957 c 36 § 2; 1925 ex.s. c 154 § 4; RRS § 8381-4.]

76.36.050 Certificate as evidence of registration and ownership. The certificate of the supervisor of forestry, attached to the original or copy of the written statement or assignment, and signed by him or his deputy as herein provided, shall be received in all courts of this state as evidence of the due and proper registration of the mark or brand and of the ownership thereof without proof of the signature thereto. [1957 c 36 § 3; 1925 ex.s. c 154 § 5; RRS § 8381-5.]

76.36.060 Impression of mark—Presumption. All forest products and booming equipment having impressed thereupon a registered mark or brand shall be presumed to belong to the person appearing on the records in the office of the supervisor of forestry as the owner of such mark or brand. All forest products having impressed thereupon a registered catch brand shall be presumed to belong to the owner of the registered catch brand, unless there shall be impressed thereupon more than one registered catch brand, in which event they shall be presumed to belong to the owner whose registered catch brand was placed thereupon latest in point of time. [1957 c 36 § 4; 1925 ex.s. c 154 § 6; RRS § 8381-6. Prior: 1890 p 111 § 4.]

76.36.070 Cancellation of registration. The supervisor of forestry, upon the petition of the owner of a registered mark or brand, may cause the registration thereof to be canceled, and, in the event of such cancellation, the mark or brand shall be open to registration by any person subsequently applying therefor. [1957 c 36 § 5; 1925 ex.s. c 154 § 7; RRS § 8381-7.]

76.36.090 Catch brands. Every person desiring to use a catch brand as an identifying mark upon forest products or booming equipment purchased or lawfully acquired by him from another, shall before using it, make application for the registration thereof in the office of the supervisor of forestry in the manner prescribed for the registration of other marks or brands as herein required. The provisions contained in this chapter in reference to registration, certifications, assignment, and cancellation, and the fees to be paid to the supervisor of forestry shall apply equally to catch brands. The certificate of the supervisor of forestry shall designate the mark or brand as a catch brand, and the mark or brand selected by the applicant as a catch brand shall be enclosed in the letter C, which shall identify the mark or brand as, and shall be used only in connection with, a catch brand. [1957 c 36 § 6; 1925 ex.s. c 154 § 9; RRS § 8381-9.]

76.36.100 Right of entry to retake branded products. The owner of any mark or brand registered as herein provided, by himself or his duly authorized agent or representative, shall have a lawful right, at any time and in any peaceable manner, to enter into or upon any tidelands, marshes and beaches of this state and any mill, mill yard, mill boom, rafting or storage grounds and any forest products or raft or boom thereof, for the purpose of searching for any forest products and booming equipment having impressed thereupon or cut therein a registered mark or brand belonging to him and to retake any forest products and booming equipment so found by him. [1925 ex.s. c 154 § 10; RRS § 8381-10. Prior: 1901 c 123 § 4.]

76.36.110 Penalties for false branding, etc. Every person:

(1) Who shall put into any of the waters of this state, or ship on any common carrier railroad for the purpose of floating or rafting in any of said waters, any forest

products, or use any booming equipment as a part of his operation in securing, rafting or floating forest products, without having plainly impressed or cut in a conspicuous place on each stick or piece of forest products so put into any of the waters of this state or shipped on any common carrier railroad, and on each piece of booming equipment so used, a mark or brand previously registered as required by the terms of this chapter; or,

(2) Except boom companies and log patrol companies organized as corporations for the purpose of catching or reclaiming and holding or disposing of forest products for the benefit of the owners, and authorized to do business under the laws of this state, who shall have or take in tow or into his custody or possession or under his control, without the authorization of the owner of a registered mark or brand thereupon, any forest products or booming equipment having thereupon a mark or brand registered as required by the terms of this chapter, or, with or without such authorization, any forest products or booming equipment required to be branded under the terms of this chapter with a registered mark or brand and having no registered mark or brand impressed thereupon or cut therein; or,

(3) Who shall impress upon or cut in any forest products or booming equipment a mark or brand that is false, forged or counterfeit; or,

(4) Who shall interfere with, prevent or obstruct the owner of any registered mark or brand, or his duly authorized agent or representative, entering into or upon any tidelands, marshes or beaches of this state or any mill, mill site, mill yard or mill boom or rafting or storage grounds or any forest products or any raft or boom thereof for the purpose of searching for forest products and booming equipment having impressed thereupon a registered mark or brand belonging to him or retaking any forest products or booming equipment so found by him; or,

(5) Who shall impress or cut a catch brand that shall not have been registered under the terms of this chapter upon or into any forest products or booming equipment upon which there is or should be a registered mark or brand as required by the terms of this chapter or a catch brand, whether registered or not, upon any forest products or booming equipment that shall not have been purchased or lawfully acquired by him from the owner; shall be guilty of a gross misdemeanor. [1925 ex.s. c 154 § 11; RRS § 8381-11. Prior: 1890 p 112 § 8.]

76.36.120 Forgery of mark, etc.—Penalty. Every person who, with an intent to injure or defraud the owner:

(1) Shall falsely make, forge or counterfeit a mark or brand registered as herein provided and use it in marking or branding forest products or booming equipment; or,

(2) Shall cut out, destroy, alter, deface, or obliterate any registered mark or brand impressed upon or cut into any forest products or booming equipment; or,

(3) Shall sell, encumber or otherwise dispose of or deal in, or appropriate to his own use, any forest products or booming equipment having impressed thereupon a mark or brand registered as required by the terms of this chapter; or

(4) Shall buy or otherwise acquire or deal in any forest products or booming equipment having impressed thereupon a registered mark or brand;

Shall be guilty of a felony. [1925 ex.s. c 154 § 12; RRS § 8381-12. Prior: 1890 p 111 §§ 6, 7.]

76.36.130 Sufficiency of mark. A mark or brand cut in boom sticks with an ax or other sharp instrument shall be sufficient for the purposes of this chapter if it substantially conforms to the impression or drawing and written description on file in the office of the supervisor of forestry. [1957 c 36 § 7; 1925 ex.s. c 154 § 13; RRS § 8381-13.]

76.36.140 Application of chapter to eastern Washington. In view of the different conditions existing in the logging industry of this state between the parts of the state lying respectively east and west of the crest of the Cascade mountains, forest products may be put into the water of this state or shipped on common carrier railroads without having thereon a registered mark or brand, as herein required, within that portion of the state lying east of the crest of the Cascade mountains and composed of the following counties to wit: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima; and the penalties herein provided for failure to mark or brand such forest products shall not apply: *Provided*, That any person operating within such east portion of the state may select a mark or brand and cause it to be registered in the office of the supervisor of forestry pursuant to the terms of this chapter, and use it for the purpose of marking or branding forest products and booming equipment, and, in the event of the registration of such mark or brand and the use of it in marking or branding forest products or booming equipment, the provisions hereof shall apply as to the forest products and booming equipment so marked or branded. [1957 c 36 § 8; 1925 ex.s. c 154 § 14; RRS § 8381-14.]

76.36.150 Renewal of marks or brands—Effect of failure to renew—Abandoned marks or brands. The supervisor of forestry shall on or before September 30, 1949, and each five-year period thereafter, notify by registered letter the owner or owners of all log marks or brands then of record in the state, to renew the same. A fee of five dollars shall be charged for new brands or marks, assignment of brands or marks and renewing marks or brands. Upon receipt of said fee, the supervisor of forestry shall give a renewal certificate, which shall give the holder and owner thereof the exclusive right to continue the use of said mark or brand within the state. If any owner or owners of a mark or brand which is on record fails to pay such renewing fee within three months after the notification as herein provided,

such brand shall become forfeited and no longer be carried on said records.

On and after January 1, 1950, no person, firm, association, or corporation shall claim or own any log mark or brand which has not been renewed in accordance with the provisions of this section, and any failure to renew the log mark or brand as required by such provisions shall be deemed the abandonment of the same, and any other person, firm, association, or corporation shall be at liberty to adopt or use such mark or brand so abandoned: *Provided*, That no person, firm, association, or corporation shall be at liberty to claim or use such abandoned mark or brand until after the same has been recorded in his or its own name, in the manner provided in this chapter: *Provided, however*, That no abandoned or canceled brand may be reissued for a period of one year after such abandonment or cancellation, except to the previous owner or his assignee: *Provided further*, That in case of a dispute as to the right to the use of such mark or brand, the supervisor of forestry shall determine which of the applicants is entitled to the use thereof. [1957 c 36 § 9; 1949 c 216 § 1; Rem. Supp. 1949 § 8381-16.]

76.36.160 Deposit of fees. The supervisor of forestry shall deposit all moneys received under this chapter in the log patrol revolving fund. [1957 c 36 § 10.]

76.36.900 Severability—1925 ex.s. c 154. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional. [1925 ex.s. c 154 § 15; RRS § 8381-15.]

**Chapter 76.40
LOG PATROLS**

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76.40.910 Construction—1947 c 116.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see note following Title 76 RCW digest.

76.40.010 Definitions. Words and phrases herein used, unless clearly contrary to or inconsistent with the context of this chapter or the section in which used, shall be construed as follows:

(1) "Log Patrol" includes all activities in connection with the recapture, repossession, and delivery to owners or to boom companies of stray logs in this state except activities by the owner of such logs, the transportation agency that towed or transported the booms or cargo from which such stray logs were lost, or any other duly constituted agent of the owner;

(2) "Stray logs" means and includes any and all logs, piling, poles, and boom sticks having a merchantable value that are adrift or have been adrift and stranded on beaches, marshes, or tidal and shorelands which have escaped in any manner from the owner or from a transportation agency, from storage or while being transported;

(3) "Person" includes the plural and all corporations foreign and domestic, copartnerships, firms, and associations of persons;

(4) "Boom company" means a company organized and operating under the authority of chapter 76.28 RCW.

(5) "Waters of this state" include any and all bodies of fresh and salt water including all rivers and lakes and their tributaries, harbors, bays, bayous, and marshes within the jurisdiction of the state capable of being used for the transportation or storage of stray logs. [1957 c 182 § 1. Prior: (i) 1947 c 116 § 2; Rem. Supp. 1947 § 8415-11. (ii) 1947 c 116 § 7; Rem. Supp. 1947 § 8415-16.]

76.40.012 Enforcement of chapter. It shall be the duty of the supervisor of forestry to administer and enforce the provisions of this chapter. [1955 c 108 § 1; 1953 c 140 § 2.]

76.40.013 Rules and regulations—Penalty for violation. The supervisor of forestry may adopt and enforce such reasonable rules and regulations as may be consistent with and necessary to carry out the provisions of this chapter relating to log patrols. Any violation of a rule or regulation prescribed by the supervisor of forestry under this chapter shall be punishable as a misdemeanor. [1957 c 182 § 9.]

76.40.015 Log patrol revolving fund. The tax commission shall create, maintain and administer outside the state treasury a permanent revolving fund, to be known as the "log patrol revolving fund," in which shall be deposited all moneys received by it under this chapter. Such revolving fund shall be used to pay the salaries, wages and other operating expenses arising under the administration of this chapter, and whenever there are moneys in excess of ten thousand dollars in the revolving fund, such excess moneys shall, at the end of

each bimonthly period commencing July 1, 1953, be remitted by the tax commission to the state treasurer, and shall be deposited to the credit of the permanent school fund.

Before any payroll or expense voucher is charged against the revolving fund, it shall be signed by the supervisor of forestry and approved by the tax commission. All moneys shall be paid from the revolving fund by check or voucher. [1953 c 140 § 1.]

76.40.016 Finance—First operations. There is hereby appropriated from the general fund to the tax commission the sum of ten thousand dollars, or so much thereof as may be necessary, to be used under the supervision of the supervisor of forestry, for the payment of salaries, wages and operating expenses incurred in the administration of this chapter: *Provided*, That whenever sufficient moneys are deposited in the log patrol revolving fund to pay current expenses arising under the administration of this chapter, such expenses shall thereafter be paid from said revolving fund: *Provided further*, That before any moneys are remitted to the state treasurer under the provisions of RCW 76.40-.015, ten thousand dollars shall be returned to the state general fund. [1953 c 140 § 13.]

76.40.020 Compliance with chapter required. It shall be unlawful for any person, firm, association or corporation to hold any stray log or to directly or indirectly engage in the activities of a log patrol on or adjacent to the waters of this state, except that area in the state of Washington on the Columbia River above Grand Coulee Dam drained by the Columbia River and its tributaries, and except as hereinafter provided. Nothing in this chapter shall be construed to deprive any person of any right to take nonmerchantable unbranded stray logs for his own domestic use. [1957 c 182 § 2; 1955 c 27 § 1; 1953 c 140 § 9; 1947 c 116 § 1; Rem. Supp. 1947 § 8415-10.]

76.40.030 Log patrol license—Bond—Equipment stickers or devices—Fees. Before any person may engage in log patrol activities he must have an existing license from the state therefor. Before any license is issued the applicant must apply to the department of natural resources on a form to be prescribed by said department. The application must contain the name and address of the applicant or applicants, the name, type, and size of equipment to be used, and the mailing address of the principal place of business at which address process may be served upon the applicant. Before any license may be issued the applicant must execute and file with said department, to be approved by it, a surety bond running to the state in the sum of five thousand dollars, conditioned that the applicant will comply with all the requirements of the laws of the state governing such activities, and will account for all stray logs taken into possession. Each application shall be accompanied by a remittance of one hundred dollars for each boat or truck to be used or operated in such activities by the licensee or agent. All licenses shall expire on June 30th following the date of issuance. The

department shall issue each applicant a license and shall also issue distinctive stickers or other suitable devices for each piece of equipment listed in the application identifying it as engaged in log patrol activities. A fee of four dollars shall be paid for each pair of such stickers or devices used. [1963 c 12 § 1; 1957 c 182 § 3; 1955 c 108 § 3; 1953 c 140 § 10; 1947 c 116 § 3; Rem. Supp. 1947 § 8415-12.]

76.40.040 Identifying equipment device to be displayed. It shall be unlawful for any licensee or his agent to engage in the activities of a log patrol without having at all times displayed on each side of each piece of licensed equipment the distinctive device identifying it as a log patrol issued by the supervisor of forestry. [1957 c 182 § 4; 1947 c 116 § 4; Rem. Supp. 1947 § 8415-13.]

76.40.050 Duties of log patrol, boom company, or other agency, on recovery of stray logs—Compensation. (1) All stray logs shall, whenever practicable, be returned to the owner or his agent; otherwise they shall be delivered to a boom company or other agency, approved by the supervisor of forestry and which is regularly engaged in the commercial booming business or the marketing of logs and adequately equipped for sorting, rafting and handling of logs loose or in rafts, which maintains such records as are designated by the supervisor of forestry for handling stray logs, and the log patrol shall be entitled to a reasonable compensation, not to exceed the maximum herein provided, for the recovery and return of such logs, and shall have all the rights incident to a logger's lien therefor; *Provided*, That where there is no boom company or other agency, approved by the supervisor of forestry, within reasonable proximity to the place where stray logs are, or may be recovered, the supervisor of forestry is authorized to approve a plan for processing such logs by some other agency to accomplish the purpose herein provided to be performed by such boom companies or other agency; *Provided*, That no log patrol shall take into possession any stray logs during the time that the owner, his agent, or the transportation agency which lost said stray logs, are attempting, or are awaiting favorable weather conditions, to attempt to recover said stray logs.

(2) A boom company or other agency, approved by the supervisor of forestry, upon receipt of such stray logs, shall give adequate receipt therefor and promptly thereafter shall cause them to be scaled by a log scaling bureau or by an individual log scaler approved by the supervisor of forestry, whose regular and established business is that of scaling logs. A copy of each scale certificate shall immediately be forwarded to the division of forestry and to the log patrol which delivered said logs to such boom company or other agency. Thereafter at least ten days subsequent to the mailing of a detailed sales notice specifying time and place and date of sale to all prospective purchasers requesting such notices such boom company or other agency with reasonable promptness shall offer for sale such stray logs in the open market to the person making the highest offer and from the proceeds pay the log patrol for services performed, a sum which shall not exceed sixty

percent of the current selling price of logs of the same grade and type, or fifteen dollars per thousand feet board measure for merchantable logs of number three grade or better, whichever sum is greater, unless written authority for the payment of a higher rate is given in advance by the owner of said stray logs or his agent or unless a different rate is approved by the supervisor of forestry in exceptional cases and on adequate proof of the necessity therefor: *Provided*, That in the event such stray logs are not of sufficient quantity, or are not located within reasonable proximity to a market conducive to competitive bidding in bringing the highest price therefor, or in the event any raft or small parcel of logs shall contain ten percent by scaled volume or less of stray logs, the said stray logs may be sold by the boom company or other agency approved by the supervisor of forestry pursuant to rules and regulations prescribed for such sales. From such proceeds, the boom company or other approved agency shall deduct the usual and customary handling charges, and at such regular intervals as may be required by the supervisor of forestry commencing after July 1, 1953, and not less frequently than every six months, pay to the owner the balance; *Provided*, That the net proceeds from unbranded stray logs, and branded stray logs the owner of which cannot be determined by existing records, shall be forwarded to the division of forestry. [1957 c 182 § 5; 1953 c 140 § 11; 1947 c 116 § 5; Rem. Supp. 1947 § 8415-14.]

Lien for labor and service on timber and lumber: Chapter 60.24 RCW.

76.40.060 Presumption as to branded logs. Branded and marked logs, boom sticks and boom chains shall be presumed to be the property of the person in whose name the brand or catch brand thereon imprinted is registered in the office of the secretary of state. [1947 c 116 § 6; Rem. Supp. 1947 § 8415-15.]

76.40.070 Recovery of boom sticks and chains—Compensation—Notice to owner—Sale. Branded or marked boom sticks and boom chains shall be held by the log patrol, boom company or approved agency for the owner as identified by the registered brand or mark thereon, and when claimed by the owner the log patrol, boom company or approved agency shall be entitled to receive reasonable compensation not to exceed ten dollars per boom stick and five dollars per boom chain and shall have all the rights incident to a logger's lien therefor. Upon receipt of such boom sticks, the log patrol, the boom company, or other approved agency shall notify the owner who shall have sixty days to recover said boom sticks upon payment of such reasonable compensation for its recovery. If the owner fails, neglects, or refuses to claim his boom sticks within such period after notice, they may be sold as stray logs. [1957 c 182 § 6; 1947 c 116 § 8; Rem. Supp. 1947 § 8415-17.]

Lien for labor and service on timber and lumber: Chapter 60.24 RCW.

76.40.080 Presumption arising from possession. Any log patrol having possession of stray logs, boom sticks or boom chains, except as herein provided shall be presumed to have and hold possession of same with intent to deprive and defraud the owner thereof and such possession shall be prima facie evidence of intent to defraud. [1947 c 116 § 9; Rem. Supp. 1947 § 8415-18.]

76.40.090 Notice to patrol not to take possession. Whenever the owner of any logs, boom sticks or chains, shall notify a log patrol by registered mail, addressed to the place of business listed in the application for license, not to take into possession any logs, boom sticks or chains, belonging to such owner and designating the brands and marks, then it shall be unlawful for such log patrol to thereafter take possession of any logs, boom sticks or chains bearing such brands or marks, until thirty days after such property has been lost from the owner, the agent, storage grounds, or transportation agency, or until such time as such notice has been rescinded by notice thereof served in the same manner. [1947 c 116 § 10; Rem. Supp. 1947 § 8415-19.]

76.40.100 Conversion of boom sticks or chains. It shall be unlawful for any log patrol or any other person without the consent of the owner, to take into possession with intent to sell, or for any person to buy boom sticks or chains, or to manufacture boom sticks into lumber or other wooden products without the written consent of the owner. [1947 c 116 § 11; Rem. Supp. 1947 § 8415-20.]

76.40.110 Unlawful to acquire or process certain logs. It shall be unlawful to purchase, or otherwise acquire stray logs other than from the owner, or from a boom company or other approved agency as provided in this chapter, or to process or manufacture products from logs acquired in contravention of the provisions of this section or to possess such logs for such purpose. [1957 c 182 § 7; 1953 c 140 § 12; 1947 c 116 § 12; Rem. Supp. 1947 § 8415-21.]

76.40.120 Record to be kept. Every log patrol shall keep, at the place of business listed in its application, open to public inspection, during office hours, such permanent record as will be a tabulation of its log patrol activities. [1947 c 116 § 14; RRS § 8412-23.]

76.40.122 Investigations—Hearings—Subpoenas—Oaths. The supervisor of forestry may investigate upon his own initiative the records of any licensee under this chapter or boom company or any person applying for a license, or any activities of the log patrol, or the making of false statements in any application for a license, and, for such purpose, may examine at the place of business of the licensee or boom company that portion of the ledgers, books of account, or other records relating to log patrol activities. The supervisor may also make such investigation as he considers appropriate at the place of business of any person who handles logs that are within the terms of this chapter, except the owner or his agent, but such investigation

shall be limited to such ledgers, books of account or other records as relate to stray logs and the activities of licensees under this chapter. For the purpose of hearing, and for the purpose of ascertaining any facts concerning log patrol activities, the supervisor of forestry shall have the powers of a superior court to issue subpoenas compelling the attendance of witnesses, and the production of ledgers, books of account or other records before it, and to administer oaths and take evidence of such witnesses under oath concerning log patrol activities or violations of this chapter. The supervisor of forestry shall issue subpoenas to such witnesses as the licensee may require to present such facts as are considered relevant. [1953 c 140 § 3.]

76.40.124 Violations by applicant or licensee—Hearing—Notice. In the event the supervisor of forestry has reason to suspect that any licensee or applicant is violating or has violated the provisions of this chapter, he shall attempt to secure a satisfactory explanation and failing to secure an explanation, he shall cause a notice to be mailed to such licensee or applicant by registered mail to the place of business listed in the license, setting forth the provisions of this chapter which the licensee or applicant is charged with violating, and setting a date in the notice upon which a hearing will be had to determine whether or not the licensee or applicant is violating or has violated such provisions or has made any false statements in the application for a license. [1953 c 140 § 4.]

76.40.125 Violations by licensee—Remedy of owner—Procedure. If any licensee takes possession of or sells or delivers or fails to deliver any logs, in contravention of the provisions of this chapter, the owner of the logs or his agent or the transportation agency which lost any of the logs may make written demand upon the licensee by registered mail to the place of business listed in the license to deliver the stray logs, as provided in this chapter, to the owner or his agent or to a boom company, or, if the logs are not stray logs or were taken into possession in contravention of this chapter, to deliver the logs to the owner or his agent or the transportation agency. Upon failure to comply with the demand within forty-eight hours, the owner or his agent or the transportation agency may file with the supervisor of forestry a copy of the demand, together with an affidavit setting forth the particulars in which affiant believes that this chapter has been violated, the approximate number of logs involved, the value of the logs, and, if the affiant believes the logs are in the possession of the licensee, the body of water or the county in which affiant believes the logs are located. The supervisor of forestry may thereupon make demand upon the licensee to deliver the logs as provided in this chapter or give a satisfactory explanation or make a settlement with the owner, his agent or the transportation agency. If the licensee fails to comply with the demand within seven days the supervisor of forestry shall notify the licensee that a hearing will be held at a specified time and place to determine whether the supervisor of forestry should

revoke or suspend the license of the licensee. [1955 c 108 § 6; 1953 c 140 § 5.]

76.40.127 Denial, revocation, suspension of license. The supervisor of forestry may upon giving notice to the licensee or the applicant, hold hearings to determine whether a license should be revoked or suspended or the application for a license denied and to find whether any person has been injured by reason of any violation of this chapter by the licensee or applicant. If the supervisor of forestry at such hearing finds that the licensee or applicant has been guilty of any violation of the provisions of this chapter or of any rule or regulation adopted pursuant to the authority granted in this chapter, or has made false statements on the application for a license, or of any report or return required to be made by such licensee, he shall revoke, suspend or deny the application therefor. [1957 c 182 § 8; 1955 c 108 § 7; 1953 c 140 § 6.]

76.40.128 Denial, revocation, suspension of license—Reparation as condition to issuance or reinstatement. The supervisor of forestry, in the order revoking or suspending a license or denying the application for a license, may provide in the order that before the licensee's license will be reinstated or a new one issued to him, he shall make reparation in such amount as the supervisor of forestry believes reasonable, just and equitable, to any person found at the hearing to have been injured as a result of the licensee's violation of the provisions of this chapter. [1955 c 108 § 8; 1953 c 140 § 7.]

76.40.130 Penalties—Criminal—Civil actions. Any violation of this chapter shall be a gross misdemeanor. In addition thereto, the owner who has been deprived of the use, benefit or possession of any stray logs, boom sticks or boom chains, in violation of this chapter, shall have a right of civil action to recover for himself in damages from any person causing such deprivation, including the purchaser of such stray logs, boom sticks and boom chains. [1947 c 116 § 13; Rem. Supp. 1947 § 8415-22.]

76.40.900 Severability—1947 c 116. If any section, phrase, provision or clause hereof shall be held ineffectual for any reason or unconstitutional, that shall not affect the validity of the remaining portions of said act. [1947 c 116 § 15; no RRS.]

76.40.910 Construction—1947 c 116. In case of conflict with any existing provision of law, the provisions hereof shall prevail. [1947 c 116 § 16; Rem. Supp. 1947 § 8415-24.]

Chapter 76.42 WOOD DEBRIS—REMOVAL FROM NAVIGABLE WATERS

Sections

- 76.42.010 Removal of debris authorized—Enforcement of chapter—Department of natural resources.
76.42.020 Definitions.

- 76.42.030 Removal of wood debris—Authorized.
76.42.040 Debris removal account—Created—Disbursements authorized.
76.42.050 Debris removal account—Transfer of funds from log patrol revolving fund, authorized.
76.42.060 Navigable waters—Unlawful to deposit wood debris into—Exception.
76.42.070 Rules and regulations—Administration of chapter—Authority to adopt and enforce.

Navigation and harbor improvements: Title 88 RCW.

76.42.010 Removal of debris authorized—Enforcement of chapter—Department of natural resources. This chapter authorizes the removal of wood debris from navigable waters of the state of Washington. It shall be the duty of the department of natural resources to administer and enforce the provisions of this chapter. [1973 c 136 § 2.]

76.42.020 Definitions. "Wood debris" as used in this chapter is wood that is adrift on navigable waters or has been adrift thereon and stranded on beaches, marshes, or navigable and shorelands and which is not merchantable or economically salvageable under the Log Patrol Act, chapter 76.40 RCW.

"Removal" as used in this chapter shall include all activities necessary for the collection and disposal of such wood debris: *Provided*, That nothing herein provided shall permit removal of wood debris from private property without written consent of the owner. [1973 c 136 § 3.]

76.42.030 Removal of wood debris—Authorized. The department of natural resources may by contract, license, or permit, or other arrangements, cause such wood debris to be removed by licensed log patrolmen, other private contractors, department of natural resources employees, or by other public bodies. Nothing contained in this chapter shall prohibit any individual from using any nonmerchantable wood debris for his own personal use. [1973 c 136 § 4.]

76.42.040 Debris removal account—Created—Disbursements authorized. The department of natural resources shall create, maintain, and administer within the log patrol revolving fund a separate account to be known as the debris removal account. This account shall consist of moneys recovered from the sale of debris as defined in RCW 76.42.020, and the moneys transferred from the log patrol revolving fund as provided in RCW 76.42.050. This account shall be used to pay for removal of wood debris, and for salaries, wages, and other operating expenses arising under the administration of this chapter. [1973 c 136 § 5.]

76.42.050 Debris removal account—Transfer of funds from log patrol revolving fund, authorized. Moneys may be transferred within the log patrol revolving fund to the debris removal account not to exceed fifty percent of the total revenue of the log patrol revolving fund during each bimonthly period. The debris removal account balance shall not exceed ten thousand dollars and shall be in addition to the amount specified in RCW 76.40.015. [1973 c 136 § 6.]

76.42.060 Navigable waters—Unlawful to deposit wood debris into—Exception. It shall be unlawful to dispose of wood debris by depositing such material into any of the navigable waters of this state, except as authorized by law including any discharge or deposit allowed to be made under and in compliance with chapter 90.48 RCW and any rules or regulations duly promulgated thereunder. Violation of this section shall be a misdemeanor. [1973 c 136 § 7.]

76.42.070 Rules and regulations—Administration of chapter—Authority to adopt and enforce. The department of natural resources shall adopt and enforce such rules and regulations as may be deemed necessary for administering this chapter. [1973 c 136 § 8.]

Chapter 76.44 INSTITUTE OF FOREST PRODUCTS

Sections

- 76.44.010 Institute created.
- 76.44.020 Administration of institute—Commission, composition.
- 76.44.025 Transfer of equipment, records, etc., from department of conservation to University of Washington.
- 76.44.030 Duties.
- 76.44.040 Dissemination of research results.
- 76.44.050 Contributions may be accepted.

Bureau of statistics: Chapter 43.07 RCW.

Department of commerce and economic development: Chapter 43.31 RCW.

76.44.010 Institute created. There is hereby created the institute of forest products of the state of Washington. [1947 c 177 § 1; Rem. Supp. 1947 § 10831-1.]

76.44.020 Administration of institute—Commission, composition. The institute of forest products shall be administered by the board of regents of the University of Washington with the advice of a nonsalaried commission consisting of the dean of forestry of the University of Washington, the state supervisor of department of natural resources, and the director of the Pacific northwest forest and range experiment station as ex officio members; and six additional members who shall be appointed by the president of the University of Washington and shall serve at his pleasure. Of these additional members, two shall represent the forest industries of the state and two shall represent the labor of the state, and two shall be chosen at large. [1959 c 306 § 1; 1947 c 177 § 2; Rem. Supp. 1947 § 10831-2.]

76.44.025 Transfer of equipment, records, etc., from department of conservation to University of Washington. All of the equipment, records, allotments, and appropriations pertaining to the institute of forest products shall be transferred from the department of conservation to the University of Washington for the use of the institute of forest products. [1959 c 306 § 2.]

76.44.030 Duties. The institute of forest products shall investigate current and necessary research in forest utilization and the marketing of forest products, affecting the industrial and commercial development of the state of Washington; shall correlate, interchange information and disseminate the results of such research; and shall, to the extent deemed necessary, provide for or conduct additional research projects or pilot plant demonstrations of research results by cooperating with all existing educational, public and industrial institutions or agencies of the state and arranging for the financing of such projects. [1947 c 177 § 3; Rem. Supp. 1947 § 10831-3.]

76.44.040 Dissemination of research results. The results of any research or pilot plant tests undertaken by the institute or in which the institute participates shall be available to all industries and citizens of the state of Washington under such methods of dissemination and use as the commission may designate. [1947 c 177 § 4; Rem. Supp. 1947 § 10831-4.]

76.44.050 Contributions may be accepted. The institute is hereby authorized to accept funds from any forest using industry or others for the prosecution of any research or pilot plant project which it may undertake; and the commission shall determine the just and fair contributions from industries or persons benefiting from its activities as a necessary requirement to the initiation of any research project. [1947 c 177 § 5; Rem. Supp. 1947 § 10831-5.]

Chapter 76.48 SPECIALIZED FOREST PRODUCTS

Sections

- 76.48.010 Declaration of public interest.
- 76.48.020 Definitions.
- 76.48.030 Unlawful acts.
- 76.48.040 Agencies responsible for enforcement of chapter.
- 76.48.050 Harvesting permit—Expiration—Specifications.
- 76.48.060 Harvesting permit—Required—Forms—Filing.
- 76.48.070 Transporter of specialized forest products must have sales invoice, bill of lading or harvesting permit.
- 76.48.080 Contents of permit, sales invoice or bill of lading.
- 76.48.090 When harvesting permit may be used in lieu of sales invoice or bill of lading.
- 76.48.100 Exemptions.
- 76.48.110 Violations—Seizure and sale of products—Disposition of proceeds.
- 76.48.120 False, fraudulent or forged harvesting permit, sales invoice, bill of lading, etc.
- 76.48.130 Penalties.
- 76.48.900 Severability—1967 ex.s. c 47.
- 76.48.910 Saving—1967 ex.s. c 47.

76.48.010 Declaration of public interest. It is in the public interest of this state to protect a great natural resource and to provide a high degree of protection to the landowners of the state of Washington from the theft of specialized forest products. [1967 ex.s. c 47 § 2.]

76.48.020 Definitions. Unless otherwise required by the context, as used in this chapter:

(1) "Christmas trees" shall mean any evergreen trees or the top thereof, commonly known as Christmas trees,

with limbs and branches, with or without roots, including fir, pine, spruce, cedar, and other coniferous species.

(2) "Native ornamental trees and shrubs" shall mean any trees or shrubs which are not nursery grown and which have been removed from the ground with the roots intact.

(3) "Cut or picked evergreen foliage," commonly known as brush, shall mean evergreen boughs, huckleberry, salal, fern, Oregon grape, scotchbroom, rhododendron, and other cut or picked evergreen products.

(4) "Split cedar products" shall mean shakes, shakeboards, shake bolts, fence posts, hop poles, pickets, or any other split cedar product.

(5) "Cascara bark" shall mean the bark of a Cascara tree.

(6) "Huckleberry" shall mean the fruit or foliage of *Vaccinium Ovatum*.

(7) "Specialized forest products" shall mean Christmas trees, native ornamental trees and shrubs, cut or picked evergreen foliage, split cedar products, Cascara bark, and huckleberry.

(8) "Person" shall include the plural and all corporations foreign or domestic, copartnerships, firms, and associations of persons.

(9) "Operator" shall mean any person who shall engage, on behalf of himself or others, in the harvesting of any specialized forest product from any lands within the state.

(10) "Harvesting permit" shall mean a document in writing executed by a landowner, his duly authorized agent or representative, or by a lessee of land (herein referred to as "permitters") granting permission to a designated person (herein referred to as "permittee") to cut, destroy, mutilate, pry, pick, peel, break, or remove a designated specialized forest product from land owned or controlled by him. [1967 ex.s. c 47 § 3.]

76.48.030 Unlawful acts. It shall be unlawful for any person to cut, destroy, mutilate, pry, pick, peel, break, or remove specialized forest products as described in RCW 76.48.020 without first obtaining a harvesting permit from the permittor. [1967 ex.s. c 47 § 4.]

76.48.040 Agencies responsible for enforcement of chapter. Agencies charged with the enforcement of this chapter shall include, but not be limited to, the Washington state patrol, county sheriffs and their deputies, municipal police forces, forest wardens and rangers. Primary enforcement responsibility lies in the county sheriff and his deputies. [1967 ex.s. c 47 § 5.]

76.48.050 Harvesting permit—Expiration—Specifications. A harvesting permit shall be executed by the owner, his agent or representative, or by the lessee of land on which specialized forest products are to be harvested. All harvesting permits shall expire at the end of the calendar year in which issued, or sooner, at the discretion of the permittor. The harvesting permit shall specify:

- (1) The date of its execution and expiration.
- (2) The name and address of the permittor.
- (3) The name and address of the permittee.

(4) The type of specialized forest products to be harvested.

(5) The approximate amount or volume of specialized forest products to be harvested.

(6) The legal description of the property from which the specialized forest products are to be harvested, including the name of the county. [1967 ex.s. c 47 § 6.]

76.48.060 Harvesting permit—Required—Forms—Filing. A harvesting permit from the owner, his agent or representative or the lessee of the land concerned shall be obtained by the permittee prior to cutting, destroying, mutilating, prying, picking, peeling, breaking, or removing more than five Christmas trees, more than five ornamental trees or shrubs, more than five pounds of cut foliage or huckleberry, more than five split cedar products, or more than five pounds of Cascara bark growing upon any land, including his own. Harvesting permit forms shall be provided by the department of natural resources. A harvesting permit shall be completed, in triplicate, for each land ownership on which a permittee harvests specialized forest products, the original to be retained by the permittee, the duplicate to be retained by the permittor, and the triplicate to be filed by the permittee in the office of the county sheriff in whose county the land is situated: *Provided*, That in the event a single land ownership is situated in two or more counties, a harvesting permit shall be completed as to the land situated in each such county. [1967 ex.s. c 47 § 7.]

76.48.070 Transporter of specialized forest products must have sales invoice, bill of lading or harvesting permit. Except that as provided in RCW 76.48.100, it shall be unlawful for any person to transport over the public roads of the state of Washington more than five Christmas trees, more than five native ornamental trees or shrubs, more than five pounds of cut evergreen foliage or huckleberry, more than five pieces of split cedar products, or more than five pounds of Cascara bark which have been cut, picked, or collected within the state of Washington without having in his possession a written sales invoice, bill of lading, or harvesting permit evidencing his title to or authority to have possession of specialized forest products being so transported: *Provided*, That, with respect to specialized forest products harvested on lands under the ownership or management of an agency of the United States, such specialized forest products may be so transported under the authority of such written permit or other written document as is customarily used by the agency concerned. [1967 ex.s. c 47 § 8.]

76.48.080 Contents of permit, sales invoice or bill of lading. The permit, sales invoice, or bill of lading required by RCW 76.48.070 shall specify:

- (1) The date of its execution.
- (2) The number and type of products, by species, sold or being transported.
- (3) The name and address of the owner, vendor, or donor of the specialized forest products.

(4) The name and address of the vendee, donee, or receiver of the specialized forest products.

(5) The county of origin of the specialized forest products. [1967 ex.s. c 47 § 9.]

76.48.090 When harvesting permit may be used in lieu of sales invoice or bill of lading. A harvesting permit, as described in this chapter, may be used in lieu of a sales invoice or bill of lading as authority for the transportation of specialized forest products on the public roads of the state of Washington when:

(1) It has been procured, executed, and filed as required by RCW 76.48.050 and 76.48.060, and

(2) It authorizes the harvesting of the specialized forest products being transported. [1967 ex.s. c 47 § 10.]

76.48.100 Exemptions. The provisions of RCW 76.48.070, 76.48.080, and 76.48.090 shall not apply to:

(1) The transportation of nursery grown products.

(2) The transportation of logs, poles, pilings, or other major forest products from which substantially all of the limbs and branches have been removed.

(3) The activities of a landowner, his agent, or representative, or of a lessee of land in carrying on property management, maintenance, or improvements on or in connection with his land. [1967 ex.s. c 47 § 11.]

76.48.110 Violations—Seizure and sale of products—Disposition of proceeds. Whenever any law enforcement officer believes that a person is harvesting, cutting, destroying, mutilating, prying, picking, peeling, breaking, removing, or transporting specialized forest products in violation of the provisions of this chapter, he may, at the time of making an arrest, seize and take possession of any specialized forest products found. The law enforcement officer shall provide reasonable protection for the specialized forest products involved during the period of litigation or he shall sell such products at the discretion or order of the court before which the arrested person is ordered to appear. Upon disposition of the case by the court, the court shall make a reasonable effort to return the net proceeds of any sale of specialized forest products sold to the owner. If for any reason, the proceeds of such sale cannot be disposed of to the owner, such proceeds, less the reasonable expenses of the sale, shall be paid to the treasurer of the county in which the specialized forest products are sold. The county treasurer shall deposit the same in the county general fund. The return of the specialized forest products or the payment of the proceeds of any sale of products seized, to the owner shall not preclude the court from imposing any fine or penalty upon the violator for the violation of the provisions of this chapter. [1967 ex.s. c 47 § 12.]

76.48.120 False, fraudulent or forged harvesting permit, sales invoice, bill of lading, etc. It shall be unlawful for any person, upon official inquiry, investigation, or other authorized proceedings, to offer as genuine any paper, document, or other instrument in writing purporting to be a harvesting permit, sales invoice, bill of lading, or similar documentary authority issued by an

agency of the United States, as required by this chapter, knowing the same to be in any manner false, fraudulent, or forged. [1967 ex.s. c 47 § 13.]

76.48.130 Penalties. Any person who violates any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not to exceed ninety days or by both such fine and imprisonment. [1967 ex.s. c 47 § 14.]

76.48.900 Severability—1967 ex.s. c 47. If any section, provision, or part thereof of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision, or part thereof not adjudged invalid or unconstitutional. [1967 ex.s. c 47 § 15.]

76.48.910 Saving—1967 ex.s. c 47. This chapter is not intended to repeal or modify any provision of existing law. [1967 ex.s. c 47 § 16.]

TITLE 77

GAME AND GAME FISH

Chapters

- 77.04 Department of game.
- 77.08 General terms defined.
- 77.12 Powers and duties of commission.
- 77.16 Prohibited acts and penalties.
- 77.20 Beaver.
- 77.24 Predators—Bounties.
- 77.28 Game farmers.
- 77.32 Licenses.
- 77.40 Shooting grounds.
- 77.98 Construction.

Carrier or racing pigeons—Injury to: RCW 9.61.190–9.61.210.

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Hood Canal bridge, public sport fishing from: RCW 47.56.366.

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Limitation on liability of landowner for injuries to hunters and fishermen: RCW 4.24.210.

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Youth development and conservation committee, department's representative as member: RCW 43.51.520.

Chapter 77.04 DEPARTMENT OF GAME

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- 77.04.010 Short title.
- 77.04.020 Composition of department of game.
- 77.04.030 Game commission—Appointment.
- 77.04.040 Qualifications of members.
- 77.04.050 Removal of members.
- 77.04.060 Meetings—Officers—Selection of director—Compensation—Report—Office.
- 77.04.080 Powers of director.

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Refunds from motor vehicle fund of amounts taxed as ATV fuel—Distribution—Use: RCW 46.09.170.

Refunds from motor vehicle fund of amounts taxed as snowmobile fuel—Crediting—Use: RCW 46.10.150.

Thermal power plant site evaluation council, director a member: RCW 80.50.030.

Treasurer's duty to refund snowmobile fuel tax to general fund—Crediting—Use: RCW 46.10.150.

77.04.010 Short title. This title shall be known and may be cited as "Game Code of the State of Washington." [1955 c 36 § 77.04.010. Prior: 1947 c 275 § 1; Rem. Supp. 1947 § 5992–11.]

77.04.020 Composition of department of game. The department of game shall consist of the state game commission and the director of game. The director of game shall have charge and general supervision of the department of game and may appoint and employ such game protectors, deputy game protectors, and such clerical and other assistants as may be necessary for the general administration of the department.

No person shall be eligible to appointment as director of game unless he has practical knowledge of the habits and distribution of the wild animals, wild birds and game fish of this state. [1955 c 36 § 77.04.020. Prior: 1947 c 275 § 2; Rem. Supp. 1947 § 5992–12.]

77.04.030 Game commission—Appointment. The governor shall appoint a state game commission, which shall consist of six electors of the state, to hold office for terms of six years each from the date of their appointment, or until their successors are appointed and qualified, unless sooner removed as hereinafter provided. At least three of them shall be residents of that portion of the state lying east of the summit of the Cascade mountains, and at least three shall be residents of that portion of the state lying west of the summit of the Cascade mountains. No two members shall be residents of the same county.

Of the members of the commission first appointed, two, one of whom resides east of the summit of the Cascade mountains and one of whom resides west of the summit of the Cascade mountains, shall be appointed for a term of six years each; two, one of whom resides east of the summit of the Cascade mountains, and one of whom resides west of the summit of the Cascade mountains, shall be appointed for a term of four years each; and two, one of whom resides east of the summit of the Cascade mountains and one of whom resides west of the summit of the Cascade mountains, shall be appointed for a term of two years each. [1955 c 36 § 77.04.030. Prior: 1947 c 275 § 3; Rem. Supp. 1947 § 5992–13.]

77.04.040 Qualifications of members. No person shall be eligible to appointment as a member of the state game commission unless he has general knowledge of the habits and distribution of wild animals, wild birds and game fish in the state, or who holds any other

state, county, or municipal elective or appointive office. [1955 c 36 § 77.04.040. Prior: 1947 c 275 § 4; Rem. Supp. 1947 § 5992-14.]

77.04.050 Removal of members. The governor may remove any game commissioner for inefficiency, neglect of duty, or misconduct in office, giving him a copy of the charges against him, and an opportunity of being publicly heard in person, or by counsel in his own defense, upon not less than ten days' notice. If such commissioner is removed, the governor shall file in the office of the secretary of state a complete statement of all charges made against the commissioner and his findings thereon, together with a complete record of the proceedings, and there shall be no right of review in any court whatsoever. [1955 c 36 § 77.04.050. Prior: 1947 c 275 § 5; Rem. Supp. 1947 § 5992-15.]

77.04.060 Meetings—Officers—Selection of director—Compensation—Report—Office. The state game commission shall hold regular meetings on the first Mondays of January, April, July, and October of each year, and special meetings at such times as may be called by the chairman or by two-thirds majority of the members.

The commission at its first regular meeting after the appointment and qualification of its membership, shall meet at the state capitol and organize by electing one of its members as chairman to serve for a term of two years, and until his successor is elected and qualified, and biennially thereafter the commission shall meet at its office and elect one of its members as chairman, who shall serve for a term of two years and until his successor is elected and qualified.

At such meeting, and at any other meeting after a vacancy in the office of the director of game has occurred, the commission shall elect a director of game by a two-thirds vote of its membership, who shall hold office at the pleasure of the commission. The director shall receive such salary as shall be fixed by the governor in accordance with the provisions of RCW 43.03-.040. The said director shall be ex officio secretary of the state game commission, attend its meetings, keep a record of the business transacted by it, and perform such other duties as the commission may direct.

Each member of the commission shall receive twenty-five dollars for each day actually spent in the performance of his duties and his actual necessary traveling and other expenses in connection therewith, including all expenses in going to, attending, and returning from meetings of the commission: *Provided*, That such expenses shall not exceed fifteen dollars per diem exclusive of necessary traveling expenses, not to exceed eight cents per mile.

The commission shall, on or before the last Monday of October in each odd-numbered year, make a full and complete report of the official business transacted by it, which report shall be published in pamphlet form.

The commission shall maintain its offices in the principal office of the department of game. [1961 c 307 § 9; 1955 c 352 § 1; 1955 c 36 § 77.04.060. Prior: 1949 c 205 § 1; 1947 c 275 § 6; Rem. Supp. 1949 § 5992-16.]

77.04.080 Powers of director. The director of game shall exercise all powers and perform all duties prescribed by law, and rules and regulations of the commission. [1955 c 36 § 77.04.080. Prior: 1947 c 275 § 8; Rem. Supp. 1947 § 5992-18.]

Chapter 77.08 GENERAL TERMS DEFINED

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77.08.010	General terms defined.
77.08.020	"Game fish" defined—Classification by rule or regulation, limitation.
77.08.030	"Endangered species of fish and wildlife".
77.08.040	"Deleterious exotic species of fish and wildlife"
77.08.050	"Managed marine mammals".
77.08.060	"Wildlife agent".

77.08.010 General terms defined. As used in this title or in any rule or regulation of the state game commission:

"Director" means the director of game.

"Department" means the department of game.

"Commission" means the state game commission.

"Person" means and includes any individual, any corporation, or any group of two or more individuals acting together to forward a common purpose whether acting in an individual, representative, or official capacity.

"Hunt" and its derivatives, "hunting," "hunted," etc., and "trap" and its derivatives, "trapping," "trapped," etc., means any effort to kill, injure, capture, or disturb a wild animal or wild bird.

"Fish" and its derivatives, "fishing," "fished," etc., means any effort made to kill, injure, disturb, capture, or catch a game fish.

"Closed season" means all of the time during the entire year excepting the "open season" as specified by rule and regulation of the commission.

"Open season" means the time specified by rule and regulation of the commission when it shall be lawful to hunt, trap, or fish for any game animals, fur-bearing animals, game birds, or game fish. Each period of time specified as an open season shall include the first and last days thereof.

"Closed area" means any place in the state described or designated by rule and regulation of the commission wherein it shall be unlawful to hunt or trap for game animals, fur-bearing animals, or game birds.

"Closed waters" means any lake, river, stream, body of water, or any part thereof within this state described or designated by rule and regulation of the commission wherein it shall be unlawful to fish for any game fish.

"Game reserve" means any "closed area" designated by the commission as a game reserve.

"Game fish reserve" means any "closed waters" designated by the commission as a game fish reserve.

"Bag limit" means the maximum number of game animals, game birds, fur-bearing animals, or game fish which may be taken, caught, killed, or possessed by any licensee, specified and fixed by rule and regulation of the commission for any particular period of time, or so specified and fixed as to size, sex, or species. [1955 c 36

§ 77.08.010. Prior: 1947 c 275 § 9; Rem. Supp. 1947 § 5992-19.]

77.08.020 "Game fish" defined—Classification by rule or regulation, limitation. As used in this title or in any rule or regulation of the commission, "game fish" include any *Salmo irideus* commonly known as rainbow trout, *Salmo clarkii* commonly known as cutthroat trout (coastal), *Salmo gairdnerii* commonly known as steelhead, *Salvelinus fontinalis* commonly known as Eastern brook trout, *Oncorhynchus nerka* (kennerly) commonly known as silver trout, *Cristivomer namaycush* commonly known as mackinaw trout, *Micropterus salmoides* commonly known as large-mouth black bass, *Micropterus dolomieu* commonly known as small-mouth black bass, *Prosopium williamsoni* commonly known as white fish, *Perca flavescens* commonly known as yellow perch, *Pomixis annularis* commonly known as white crappie, *Pomixis sparoides* commonly known as black crappie, *Helioperca incisor* commonly known as bluegill sunfish, *Eupomotis gibbosus* commonly known as Pumpkinseed sunfish, *Ameiurus nebulosus* commonly known as catfish, *Thymallus montanus* commonly known as Montana grayling, *Salvelinus malma spectabilis* commonly known as Dolly Värden trout or Western char or bull trout, *Salmo clarkii lewisi* commonly known as cutthroat trout, or Montana black-spotted trout, *Salmo gairdnerii kamloops* commonly known as Kamloops trout or rainbow trout, *Salmo trutta* commonly known as brown trout, *Ambloplites rupestris* commonly known as Northern rock bass, *Ameiurus melas* commonly known as black catfish, Golden trout and any such other species of fish commonly found in fresh water as may be classified as game fish by rule or regulation of the commission: *Provided*, That the commission shall not classify as game fish any species of fish classified as a food fish by the director of fisheries. [1969 ex.s. c 19 § 1; 1955 c 36 § 77.08.020. Prior: 1947 c 275 § 10; Rem. Supp. 1947 § 5992-20.]

Director of fisheries: Chapter 75.08 RCW.
Food fish, shellfish: RCW 75.04.040.

77.08.030 "Endangered species of fish and wildlife". As used in this title or in any rule or regulation of the commission "endangered species of fish and wildlife" shall mean those species of fish and wildlife designated by rule or regulation of the commission as seriously threatened with extinction. Such rules or regulations of the commission shall include, but not be limited to, endangered species as so designated by the secretary of the interior on August 9, 1971: *Provided*, That the commission may amend such rules and regulations to exclude any species of fish and wildlife from designation as an endangered species if the commission determines that the species is no longer endangered. [1971 ex.s. c 166 § 1.]

77.08.040 "Deleterious exotic species of fish and wildlife". As used in this title or in any rule or regulation of the commission "deleterious exotic species of fish and wildlife" shall mean these species of fish and

wildlife designated by rule or regulation of the commission as dangerous to the environment or native species of fish and wildlife of the state of Washington. [1971 ex.s. c 166 § 2.]

77.08.050 "Managed marine mammals". As used in this title or any rule or regulation of the commission "managed marine mammals" shall include all mammals of the order cetacea and the suborder pinnipedia including but not limited to whales, porpoises, dolphins, seals and sea lions. [1971 ex.s. c 166 § 5.]

77.08.060 "Wildlife agent". As used in Title 77 RCW or in any rule or regulation of the commission, "wildlife agent" means any person heretofore referred to in the provisions of Title 77 RCW as a "game protector". [1971 ex.s. c 121 § 1.]

**Chapter 77.12
POWERS AND DUTIES OF COMMISSION**

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- 77.12.480 Snake river forming boundary with Idaho—Honoring fish and game licenses of either state.
- 77.12.490 Snake river forming boundary with Idaho—Purpose—Restrictions on areas in which licensees may fish or hunt.
- 77.12.500 Agreements with owners or lessees of real property for use for public hunting or fishing.
- 77.12.510 Managed marine mammals—Rules and regulations as to capture, sale, confinement, etc.—Permits.

77.12.010 Policy of protection enunciated. The wild animals and wild birds in the state of Washington and the game fish in the waters thereof are the property of the state. The game animals, fur-bearing animals, game birds, nongame birds, harmless or song birds, and game fish shall be preserved, protected, and perpetuated, and to that end such game animals, fur-bearing animals, game birds, nongame birds, harmless or song birds, and game fish shall not be taken at such times or places, by such means, in such manner, or in such quantities as will impair the supply thereof. [1955 c 36 § 77.12.010. Prior: 1947 c 275 § 11; Rem. Supp. 1947 § 5992-21.]

77.12.020 Wildlife to be classified. The commission shall, from time to time, investigate and determine the habits and distribution of the various species of wild animals, wild birds, and game fish native to or capable of being adapted to the climatic conditions of the state, and classify the wild animals as game animals, predatory animals, fur-bearing animals, and protected wildlife, and classify the wild birds as game birds including migratory game birds and upland game birds, predatory birds, nongame birds, and harmless or song birds. [1969 ex.s. c 18 § 1; 1955 c 36 § 77.12.020. Prior: 1947 c 275 § 12; Rem. Supp. 1947 § 5992-22.]

77.12.030 Propagation and protection, commission to regulate. The commission may regulate the propagation and preservation of all game animals, fur-bearing animals, protected wildlife, game birds, nongame birds, harmless or song birds, and game fish, and the collection of game fish spawn, and the distribution thereof, and the distribution of fry and adult game fish in any of the rivers, lakes, and streams of the state, and may import such spawn, fry, and adult fish as may be deemed advisable, and, when so propagated, taken or imported, distribute the same to the various counties as necessities and adaptabilities may require.

The commission may authorize or prohibit the importation of wild animals, wild birds and game fish, and regulate and license the sale and transportation thereof within the state. [1969 ex.s. c 18 § 2; 1955 c 36 § 77.12.030. Prior: 1947 c 275 § 13; Rem. Supp. 1947 § 5992-23.]

77.12.040 Rules and regulations. The commission shall, from time to time, adopt, promulgate, amend, or repeal, and enforce, reasonable rules and regulations governing the time, place and manner, or prohibiting the taking of the various classes of game animals, fur-bearing animals, protected wildlife, and predatory animals, game birds, predatory birds, nongame birds, and harmless or song birds, and game fish in the respective areas and throughout the state and the quantities, species, sex and size of such animals, birds and fish that may be taken.

The commission may establish within the state by rule and regulation game reserves and closed areas wherein all hunting and trapping for game animals, game birds, protected wildlife and fur-bearing animals, may be prohibited and game fish reserves and closed waters wherein all fishing for game fish may be prohibited. [1969 ex.s. c 18 § 3; 1955 c 36 § 77.12.040. Prior: 1947 c 275 § 14; Rem. Supp. 1947 § 5992-24.]

77.12.050 Rules and regulations—How promulgated—Certified copy as evidence. All rules and regulations adopted by the commission and all amendments to, modifications or repeals of existing rules and regulations, shall be adopted by a vote of two-thirds of the entire membership of the commission at any meeting by resolution, entered and recorded in the minutes of the commission, and shall be published at the state capital. The commission, in its discretion, may direct the publication of any such rules and regulations in other newspapers of the state by providing therefor in such resolution.

Any copy of such resolution, certified as a true copy by any member of the commission or the director, or the assistant director, or by any person authorized in writing by the director to make such certification, shall be admissible in any court as prima facie evidence of the adoption, promulgation, and validity of any such rule or regulation. [1955 c 36 § 77.12.050. Prior: 1947 c 275 § 15; Rem. Supp. 1947 § 5992-25.]

77.12.060 Service of process by game officials—Aid by law enforcement officials and citizens. The director, all game protectors, and all deputy game protectors may serve and execute all warrants and process issued by the courts in enforcing the provisions of law and all rules and regulations of the commission pertaining to wild animals, wild birds, and game fish or pertaining in any manner to the management, operation, maintenance or use of all real property used, owned, leased or controlled by the department or the conduct of persons in or on the same.

For the purpose of enforcing any such law or rule or regulation, they may call to their aid any sheriff, deputy sheriff, constable, police officer, or citizen and any such person shall render such aid. [1961 c 68 § 1; 1955 c 36 § 77.12.060. Prior: 1947 c 275 § 16; Rem. Supp. 1947 § 5992–26.]

77.12.070 Duties of game protectors and other police officers. Every game protector, deputy game protector, sheriff, constable, marshal, and police officer within his respective jurisdiction, shall enforce all laws and rules and regulations adopted by the commission for the protection of game animals, fur-bearing animals, game birds, nongame birds, harmless or song birds, and game fish, and further shall enforce all laws or rules and regulations adopted by the commission pertaining in any manner to the management, operation, maintenance or use of all real property used, owned, leased or controlled by the department or the conduct of persons in or on the same, and may issue citations to persons failing to comply with any such law or rules and regulations, or with *RCW 9.66.060 as now exist or are later amended. The police officers specified, and United States game wardens, any forest officer, appointed by the United States government, state forest wardens and rangers, and each of them, by virtue of their election or appointment, are constituted ex officio deputy game protectors within their respective jurisdictions. [1971 ex.s. c 173 § 1; 1961 c 68 § 2; 1955 c 36 § 77.12.070. Prior: 1947 c 275 § 17; Rem. Supp. 1947 § 5992–27.]

*Reviser's note: RCW 9.66.060 was repealed by 1971 ex.s. c 307 § 24; see RCW 70.93.060.

77.12.080 Arrest without warrant. Any game protector, deputy game protector, or ex officio game protector may, without warrant, arrest any person found violating any law enacted, or any rule or regulation adopted and promulgated by the commission, pertaining to wild animals, wild birds and game fish or pertaining in any manner to the management, operation, maintenance or use of all real property used, owned, leased or controlled by the department or the conduct of persons in or on the same, or *RCW 9.66.060 as now exist or are later amended. [1971 ex.s. c 173 § 2; 1961 c 68 § 3; 1955 c 36 § 77.12.080. Prior: 1947 c 275 § 18; Rem. Supp. 1947 § 5992–28.]

*Reviser's note: RCW 9.66.060 was repealed by 1971 ex.s. c 307 § 24; see RCW 70.93.060.

77.12.090 Search of vehicles, game bags, receptacles, etc. Any member of the commission, the director, and any game protector, deputy game protector, or ex officio game protector may search without warrant, any conveyance, vehicle, game bag, game basket, game coat or other receptacle for game animals, game birds, or game fish, or any package, box, tent, camp, or other similar place which he has reason to believe contains evidence of violations of law or rules and regulations of the commission. [1955 c 36 § 77.12.090. Prior: 1947 c 275 § 19; Rem. Supp. 1947 § 5992–29.]

77.12.100 Seizure of contraband game and devices—Forfeiture. Any member of the commission, the director, and all game protectors, deputy game protectors, and ex officio game protectors, may seize without warrant all wild birds, wild animals, game fish, or parts thereof, taken, killed, transported, or possessed contrary to law, or rule or regulation of the commission, and any dog, gun, trap, net, seine, decoy, bait, boat, light, fishing tackle, or other device unlawfully used in hunting, fishing, or trapping, or held with intent to use unlawfully in hunting, fishing, or trapping. The justice of the peace in either of the two nearest incorporated cities or towns nearest the place the seizure is made shall have power and jurisdiction in any prosecution for unlawfully hunting, fishing, or trapping, in addition to any other penalty provided by law, to forfeit for the use of the commission, any wild animal, wild bird, or game fish, and any article or dog so seized and proved to have been unlawfully used or held with intent unlawfully to use. In case it appears upon the sworn complaint of the officer making the seizure that any articles seized were not in the possession of any person, and that the owner thereof is unknown, the court shall have power and jurisdiction to forfeit such articles so seized upon a hearing duly had after service of summons, describing the articles seized, upon the unknown owner by publication in the manner provided by law for the service of summons by publication in civil actions. All dogs, guns, traps, nets, seines, decoys, baits, boats, lights, fishing tackle, or other devices seized under the provisions of this title unless forfeited by order of the court, shall be returned, after the completion of the case, and the fines, if any, have been paid. [1955 c 36 § 77.12.100. Prior: 1947 c 275 § 20; Rem. Supp. 1947 § 5992–30.]

77.12.110 Disposition of forfeited articles. In the event of the seizure and forfeiture of any articles as provided in RCW 77.12.100, the commission may sell all or any of such articles at public auction. The time, place and manner of holding such sale shall be within the discretion of the commission: *Provided*, That notice of the time and place of any such sale shall be published once a week for at least two consecutive weeks in advance of such sale, in at least one newspaper of general circulation in the county wherein the sale is to be held. The proceeds from all such sales shall be deposited with the state treasurer to the credit of the state game fund. [1955 c 36 § 77.12.110. Prior: 1947 c 275 § 21; Rem. Supp. 1947 § 5992–31.]

77.12.120 Seizure of contraband game—Search warrant. Any court having jurisdiction shall, upon complaint showing probable cause for believing that any wild bird, wild animal, game fish, or any part thereof, caught, taken, killed, or had in possession, or under control by any person, or shipped or transported contrary to law or rule or regulation of the commission, is concealed or illegally kept in any game bag, game basket, game coat, or in any other receptacle for game animals, game birds or game fish, or in any package, box, cold-storage locker or plant, warehouse, market, tavern, boarding house, restaurant, club, hotel, eating house, fur store, tannery, tent, camp, building, vehicle, or other place, issue a search warrant and cause a search to be made in any such place for any wild birds, wild animals, game fish, or any part thereof, and may cause any buildings, enclosure, or vehicle to be entered and any apartment, chest, box, locker, crate, basket, package, or other receptacle, to be broken open, and the contents thereof examined. [1955 c 36 § 77.12.120. Prior: 1947 c 275 § 22; Rem. Supp. 1947 § 5992–32.]

77.12.130 Certain devices declared public nuisances. All nets, seines, lanterns, snares, devices, contrivances, and materials while in use, or had and maintained, for the purpose of catching, taking, or killing, or attracting, or decoying any wild bird, wild animal, or game fish, contrary to law or rule or regulation of the commission, are public nuisances. The director and all game protectors, deputy game protectors, ex officio game protectors, and all police officers, shall without warrant or process, take, seize, abate, or destroy them while being used, had, or maintained for such purpose. [1955 c 36 § 77.12.130. Prior: 1947 c 275 § 23; Rem. Supp. 1947 § 5992–33.]

77.12.140 Acquisition of specimens for propagation. The commission and the director may secure by purchase, gift, or exchange with the proper authorities of other countries, states, and territories, wild birds, their nests and eggs, wild animals, and game fish, fry or spawn, for stocking or propagating purposes and may sell or otherwise dispose of birds, animals, and fish, fry or spawn, so obtained. No game protector or deputy game protector shall sell or give away any game bird, game animal, or game fish, eggs, fry or spawn, to any person without the written consent of the director. [1955 c 36 § 77.12.140. Prior: 1947 c 275 § 24; Rem. Supp. 1947 § 5992–34.]

77.12.150 Seasons—Opening and closing—Bag limits. The director, with the approval in writing of the commission, may entirely close, or shorten the open season fixed by any rule or regulation of the commission for game animals, fur-bearing animals, game birds, or game fish within the respective game areas, and after a season has been closed or shortened, he may reopen it for all or any portion of the time fixed by rule or regulation of the commission, and he may also fix daily, weekly, or season bag limits on game animals, fur-bearing animals, game birds, or game fish within any game area.

Whenever the director finds that game animals have increased in numbers in any locality of the state to such an extent that they are damaging public or private property, or over-grazing their range, the commission may establish a special hunting season, designate the area and the number and sex of the animals that may be killed by a licensed hunter therein, promulgate necessary rules and regulations, and determine by lot the number of hunters that may hunt within such area and the conditions and requirements incident thereto. The drawing shall take place at the city hall of the town nearest the area to be opened. Notice of the establishing of such special hunting season and of the drawing shall be given in the manner provided for the publishing of orders opening or closing seasons.

The exercise of power herein granted to close or reopen regular or special seasons, or fix bag limits, shall be by a written order signed by the director and filed in the office of the commission, and in the office of the auditor of any county affected by the order. [1955 c 36 § 77.12.150. Prior: 1949 c 205 § 2; 1947 c 275 § 25; Rem. Supp. 1949 § 5992–35.]

77.12.160 Notice of seasons and bag limits—Publication. The director shall publish the order closing, shortening, or reopening any season, or fixing any bag limit, in a newspaper of general circulation in each county affected, not less than three days prior to the effective date of such order. [1955 c 36 § 77.12.160. Prior: 1947 c 275 § 26; Rem. Supp. 1947 § 5992–36.]

77.12.170 State game fund—Composition—Disposition of fines, forfeitures, penalties. There is established in the state treasury a fund to be known as the state game fund which shall consist of all moneys received from fees for the sale of licenses and permits provided in this title, from the personalized vehicle license plate fees provided in chapter 46.16 RCW, and from fines, forfeitures, and costs collected for violations of this title, or any other statute for the protection of wild animals and birds and game fish, or any rule or regulation of the commission relating thereto: *Provided*, That fifty percent of all fines and bail forfeitures shall not become part of the state game fund and shall be retained by the county in which collected: *Provided further*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

All state and county officers receiving any moneys in payment of fees for licenses under this title or from fees for the personalized vehicle license plates provided in chapter 46.16 RCW, or in payment of fines, penalties, or costs imposed for violations of this title, or any other statute for the protection of wild animals and birds and game fish, or any rule or regulation of the commission; from rentals or concessions, and from the sale of real or personal property held for game department purposes, shall pay them into the state treasury to be placed to the credit of the state game fund: *Provided*, That county officers shall remit only fifty percent of all fines and bail forfeitures: *Provided further*, That all fees, fines,

forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1973 1st ex.s. c 200 § 12; 1969 ex.s. c 199 § 33; 1955 c 36 § 77.12.170. Prior: 1947 c 275 § 27; Rem. Supp. 1947 § 5992-37.]

Reviser's note: The amendment to this section by 1973 1st ex.s. c 200 was subject to a referendum. See RCW 46.16.610. The amendment was adopted and ratified by the people at the November 6, 1973 general election (Referendum Bill No. 33).

77.12.175 Personalized license plates—Use of fees for support and aid of wildlife resources—Purpose of act. It is declared to be the public policy of the state of Washington to direct financial resources of this state toward the support and aid of the wildlife resources existing within the state of Washington in order that the general welfare of these inhabitants of the state be served. For the purposes of this chapter, wildlife resources are understood to be those species of wildlife other than that managed by the department of fisheries under their existing jurisdiction as well as all unclassified marine fish, shellfish, and marine invertebrates which shall remain under the jurisdiction of the director of fisheries. The legislature further finds that the preservation, protection, perpetuation, and enhancement of such wildlife resources of the state is of major concern to it, and that aid for a satisfactory environment and ecological balance in this state for such wildlife resources serves a public interest, purpose, and desire.

It is further declared that such preservation, protection, perpetuation, and enhancement can be fostered through financial support derived on a voluntary basis from those citizens of the state of Washington who wish to assist in such objectives; that a desirable manner of accomplishing this is through offering personalized license plates for motor vehicles, the fees for which are to be directed to the state treasury to the credit of the state game fund for the furtherance of the programs, policies, and activities of the state game department in preservation, protection, perpetuation, and enhancement of the wildlife resources that abound within the geographical limits of the state of Washington.

In particular, the legislature recognizes the benefit of this program to be specifically directed toward those species of wildlife including but not limited to song birds, protected wildlife, rare and endangered wildlife, aquatic life, and specialized-habitat types, both terrestrial and aquatic, as well as all unclassified marine fish, shellfish, and marine invertebrates which shall remain under the jurisdiction of the director of fisheries that exist within the limits of the state of Washington. [1973 1st ex.s. c 200 § 1.]

Reviser's note: The enactment of this section was subject to a referendum. See RCW 46.16.610. The section was adopted and ratified by the people at the November 6, 1973 general election (Referendum Bill No. 33).

77.12.180 Operating revolving fund—Purposes—Deposit—Accounting. Authority is granted to the director to create from the game fund, a permanent operating revolving fund of fifteen thousand dollars to be used in the purchase of setting hens at game

farms and other incidental expenses of the department, and there is hereby appropriated from the game fund to the game department revolving fund the sum of fifteen thousand dollars for the purpose of carrying out the provisions of this section. All moneys hereby appropriated and received by the game department operating fund shall be deposited in the game department revolving fund. The department shall keep separate books of account for the game department revolving fund. If there shall be in said fund at the end of any year unobligated money in excess of fifteen thousand dollars, then the excess shall be placed in the game fund. [1955 c 36 § 77.12.180. Prior: 1940 c 138 § 1; Rem. Supp. 1949 § 5992-18a.]

77.12.190 Diversion of license fees prohibited. No funds accruing to the state from hunting and fishing license fees shall be diverted to any other purpose than the protection, propagation, and restoration of wildlife and game and the expenses of administration of the department. [1955 c 36 § 77.12.190. Prior: 1947 c 275 § 28; Rem. Supp. 1947 § 5992-38.]

77.12.200 Acquisition of property for hatcheries, game farms, etc. The director, with the approval of the commission, may acquire by gift, purchase, lease or condemnation, lands, buildings, waters, or other necessary property for hatchery sites, eyeing stations, rearing ponds, brood ponds, trap sites, game animal, fur-bearing animal, game bird, nongame bird and game fish farms, habitats and sanctuaries and public hunting and fishing areas together with rights of way for access to any and all such lands, buildings, or waters so acquired, in the manner provided by law for acquiring property for public use: *Provided*, That excepting for purposes of clearing title and acquiring access rights of way the power of condemnation may be exercised by the director hereunder only when an appropriation has been specifically made by the legislature for that purpose. [1965 ex.s. c 97 § 1; 1955 c 36 § 77.12.200. Prior: 1953 c 65 § 1; 1947 c 275 § 29; Rem. Supp. 1947 § 5992-39.]

77.12.201 Counties may elect to relinquish fines and receive payments in lieu of taxes. The board of county commissioners of each county may elect, upon written notice given to the director prior to January 1st of any year, to obtain for the following year an amount in lieu of real estate taxes on game lands equal to that which would be paid on similar parcels of real estate situated in the county. Upon such election the total of all fines and bail forfeitures received by the county during the following year under RCW 77.12.170 shall be transmitted to the director. The election shall continue until the game department is notified differently prior to January 1st of any year. [1965 ex.s. c 97 § 2.]

77.12.203 In lieu payments authorized—Procedure—Game lands defined. Notwithstanding the provisions of RCW 84.36.010 or any other statute to the contrary, the director is hereby authorized and directed to pay on all game lands in each county of the state, if requested pursuant to an election made under RCW

77.12.201, an amount, in lieu of real property taxes, equal to that which would be paid on similar parcels of real property subject to real property taxes: *Provided*, That no in lieu of tax payment shall be assessed or paid on any building structures or constructed facilities owned by the state for the department and situated on game lands nor shall any tax payment be paid on any game farm, fish hatchery or tidelands, nor on any public fishing area of less than one hundred acres in size.

Game lands, as used in this section, shall mean only such tracts one hundred acres or larger in size owned in fee by the state for the department and used for the purpose of wildlife habitat and public fishing and hunting.

The director shall have any and all rights of appeal and adjustment of any taxes or assessments as would any other owner of real property subject to taxation and assessment.

Upon an election being made by the board of county commissioners to receive an amount in lieu of real property taxes, the county assessors shall enter the property upon the real property tax rolls and the amount due in lieu of taxes shall be paid by the department upon statements being sent by the county treasurers in the same manner as statements for taxes on the general real property of the counties. [1965 ex.s. c 97 § 3.]

77.12.205 Disposition of in lieu payments. County commissioners of the respective counties to which the payments in lieu of real property taxes are made may expend the moneys for the benefit of any county purpose they desire. [1965 ex.s. c 97 § 4.]

77.12.207 Payments to counties of costs of confining violators. The director is hereby authorized and directed to pay to each county the actual costs of confinement of any person placed in the custody of the county by any court of competent jurisdiction for violation of this title, or any other statute for the protection of wild animals and birds and game fish, or any rule or regulation of the commission. [1965 ex.s. c 97 § 5.]

77.12.210 Control of hatcheries, game farms, etc.—Disposal of property—Procedure. The commission, acting by and through the director, shall have full control of the maintenance and management of all hatcheries, eyeing stations, rearing ponds, brood ponds, trap sites, game animal, fur-bearing animal, game bird, nongame bird, and game fish farms, habitats and sanctuaries, public hunting and fishing areas, and of the access to any and all of the foregoing and of any and all other real or personal property in any wise owned, leased, or held by the state for game department purposes, and shall have full control of the construction of all buildings and structures of any kind and all improvements of every nature in or upon all such property. The commission may make rules and regulations in relation to the operation, maintenance and use of any such property and the conduct of all persons who are in or on the same.

The commission, acting by and through the director, may, from time to time, sell timber, gravel, sand and other materials or products from real property belonging to the state and held for game department purposes and may sell or lease any such real or like personal property or grant concessions in or grant rights of way for roads or utilities of any type in or upon the same when in its judgment such action is advantageous to the state. If the commission shall determine to sell any real property, the director shall file with the department of natural resources a certificate containing the following: The legal description of the real property to be sold; a statement that the property is not then necessary for the purposes for which it was acquired; and the minimum sale price to be received by the department of natural resources therefor. Upon the filing of such certificate, the department of natural resources shall proceed to appraise and sell such real property in accordance with the statutes relative to sale of public lands of this state: *Provided*, That such lands shall not be sold for less than the amount fixed in the certificate as aforesaid.

All proceeds from such sales shall be transmitted by the department of natural resources to the state treasurer and by him credited to the state game fund. [1969 ex.s. c 73 § 1; 1955 c 36 § 77.12.210. Prior: 1947 c 275 § 30; Rem. Supp. 1947 § 5992–40.]

77.12.220 Acquisition of additional land by exchange. Whenever it may become necessary in order to obtain additional lands for hatchery sites, eyeing stations, rearing ponds, brood traps, trap sites, game animal, fur-bearing animal, game bird, nongame bird, and game fish farms, habitats and sanctuaries and public hunting or fishing areas or for rights-of-way for access to any and all such lands, to transfer or convey lands held by the state to the United States, its agencies or instrumentalities, to any municipal subdivision of this state, or to any public utility company, or to any person, and in the judgment of the commission and the attorney general such transfer and conveyance is consistent with public interest, the commission, acting by and through the director, may enter into agreements accordingly. Whenever the commission shall make any such agreement for any such transfer or conveyance and together with the attorney general certifies to the governor that such agreement has been made setting forth in such certification a description of the land or premises involved, the governor may execute and the secretary of state shall attest and deliver unto the United States or its agencies or instrumentalities, unto any municipal subdivision of the state, or unto any public utility company, or unto any person a deed of conveyance, easement or other instrument necessary to fulfill the terms of the aforesaid agreement. [1955 c 36 § 77.12.220. Prior: 1949 c 205 § 3; 1947 c 275 § 31; Rem. Supp. 1949 § 5992–41.]

77.12.230 Local assessments against game property. The director is hereby authorized to cause to be paid by state voucher currently when due any lawful local improvement district assessments made against lands held by the state for game purposes. Such payments may be

made out of any money appropriated from the state game fund to the department for capital outlay, maintenance or operations during the biennium for which such appropriation is made. [1955 c 36 § 77.12.230. Prior: 1947 c 275 § 32; Rem. Supp. 1947 § 5992-42.]

77.12.240 Director may kill game in certain circumstances. The director may remove or kill any wild animal, game fish or wild bird that in his judgment is destroying or injuring property, or when, in the judgment of the commission, such killing or removal is necessary for scientific research, or for proper game or game fish management.

In the event of any such killing of any wild animals, wild birds or game fish, the director shall, whenever in his opinion it is feasible or practical, distribute the meat thereof to state or charitable institutions. [1955 c 36 § 77.12.240. Prior: 1947 c 275 § 33; Rem. Supp. 1947 § 5992-43.]

77.12.250 Entry upon premises in course of duty permitted. The director and his duly authorized and acting assistants, game protectors, deputy game protectors, agents, appointees or employees may, in the course of their duties, enter upon any land or waters in this state and remain thereon while performing such duties and such action by such persons shall not constitute trespass. [1955 c 36 § 77.12.250. Prior: 1947 c 275 § 34; Rem. Supp. 1947 § 5992-44.]

77.12.260 Cooperative agreements for prevention of damage to private property. The commission, acting by and through the director, may enter into written agreements with persons in all matters relating to prevention of damage of private property by wild animals and wild birds. Any such agreements may include but need not be limited to provisions concerning herding, feeding, fencing, and other similar actions, to prevent such damage. Under any such agreement the department may participate in the furnishing of money, material, or labor to such extent as may be deemed necessary or advisable by the commission. [1955 c 36 § 77.12.260. Prior: 1949 c 238 § 1; 1947 c 275 § 35; Rem. Supp. 1949 § 5992-45.]

77.12.270 Damages caused by game—Payment authorized. In accordance with the terms and provisions of RCW 77.12.270 to 77.12.300, inclusive, and pursuant to such rules and regulations as may be promulgated by the commission hereunder, the commission, by and through the director, is hereby authorized to compromise, adjust, settle, and pay claims for damages caused by deer or elk out of moneys from time to time appropriated to the department for such purposes. [1963 c 177 § 8; 1955 c 36 § 77.12.270. Prior: 1949 c 238 § 3; Rem. Supp. 1949 § 5992-45a.]

77.12.280 Damages caused by game—Maximum payment—Settlement final—Arbitration procedure, advisory awards. No payment of any such claim shall be made in excess of one thousand dollars, and in the

event any claim is not adjusted, compromised, or settled and paid by the commission for a sum up to such amount, and within one year from the filing of such claim the same may be filed with the state auditor and referred to the legislature for settlement. The payment of any claim by the commission shall be full and final payment upon such claim.

In the event that any valid claim for damages as provided for in RCW 77.12.270 has been refused or has not been compromised, adjusted, settled and paid by the commission within one hundred and twenty days of the filing of the claim for damages with the commission as provided for in RCW 77.12.290, either the claimant or the commission may serve upon the other personally or by registered mail a notice of an intention to arbitrate; said notice shall contain the name of a person, selected as one arbitrator. Within ten days of receiving such a notice to arbitrate the person upon whom such notice was served shall serve personally or by registered mail upon the other party the name of an arbitrator. The two arbitrators, within seven days of the naming of the second arbitrator shall select a third arbitrator, said arbitrator not to be an employee or commissioner of the state game department. In the event that the two arbitrators as selected by the parties to the dispute cannot agree upon a third arbitrator, either party to the dispute may petition the superior court in the county in which the claim arose, asking said court to select the third arbitrator and upon receiving such a petition the court shall appoint a third arbitrator. Any filing fee or court costs arising from the foregoing petition shall be shared equally by the claimant and the department of game.

The award of the arbitrators shall be advisory only; it shall be written and filed with the department of game at its office in Seattle, King county, Washington, not later than ninety days following the naming of the third arbitrator.

In the event that the parties arbitrate no payment shall be made by the commission until the arbitrators shall have made their advisory award. The payment of any claim by the commission shall be full and final payment of the claim.

In the event that any claim is not adjusted, compromised, settled and paid through arbitration or otherwise within one year from the filing of said claim the same may be filed with the state auditor and referred to the legislature for settlement. [1957 c 177 § 1; 1955 c 36 § 77.12.280. Prior: 1949 c 238 § 4; Rem. Supp. 1949 § 5992-45b.]

77.12.290 Damages caused by game—Notice of claim required—Damages on public lands excluded. Notice of all claims for damages caused by deer or elk shall be filed in writing with the commission in the offices of the department of game, Olympia, Thurston county, Washington, within ninety days after the claimed damage has occurred, or within ninety days following the discovery of the claimed damage. In the event the damages are unascertainable within such ninety day period, the notice shall so state. The failure to file notice of any claim or pending claim shall bar payment thereof. No payment shall be made to any

claimant for damages occurring on lands leased by claimant from any public agency. [1963 c 177 § 9; 1957 c 177 § 2; 1955 c 36 § 77.12.290. Prior: 1953 c 127 § 1; 1949 c 238 § 5; Rem. Supp. 1949 § 5992-45c.]

77.12.300 Damages caused by game—Rules and regulations as to claims—Exclusion of noncooperating claimants. The commission may promulgate rules and regulations requiring affidavits and prescribing the forms thereof to be furnished in proof of all claims and providing for the time for the making of any examination, appraisal, or ascertainment of any damages. The commission may by rule and regulation provide that it may refuse to consider and pay any claims of claimants who have posted the property whereon the claimed damages have occurred, against hunting during the season immediately preceding the time when said damages occurred. [1957 c 177 § 3; 1955 c 36 § 77.12.300. Prior: 1949 c 238 § 6; Rem. Supp. 1949 § 5992-45d.]

77.12.310 Rules and regulations governing taking of predators for bounty. The commission shall, from time to time, promulgate, adopt, amend, or repeal, and enforce reasonable rules and regulations designating the times when and areas wherein hunting, trapping, taking or killing of predatory animals and birds may be carried on for the payment of bounty by the state and determining the amount of such bounties within the limitations and in accordance with the provisions set forth in this title. [1955 c 36 § 77.12.310. Prior: 1947 c 275 § 36; Rem. Supp. 1947 § 5992-46.]

77.12.315 Dogs pursuing, harassing, attacking or killing deer and elk—Declaration of emergency—Taking dogs into custody or destroying—Immunity. During the months of December, January, February and March of each year the director of the department of game may declare an emergency to exist in any specified geographical area of the state when snow depth and climatic conditions cause a threat to the survival of deer and elk and where such deer and elk are being pursued, harassed, attacked or killed by dogs. After an emergency has been declared and is in effect it shall be lawful for any game protector or law enforcement officer operating within the specified geographical area designated by the emergency proclamation to take into custody or, if necessary, destroy any dog which is pursuing, harassing, attacking, or killing any deer or elk. Any game protector or law enforcement officer who takes into custody or destroys a dog pursuant to this section shall be immune from any civil or criminal liability arising from his actions.

The declaration of an emergency pursuant to this section shall be by written order signed by the director of the department of game and filed in the office of the director and the office of the auditor of any county or counties affected by the order.

The director shall publish the emergency order in any newspaper of general circulation in any county affected not less than three days prior to the effective date of the order. [1971 ex.s. c 183 § 1.]

77.12.320 Agreements for propagation, protection of game—Acceptance of compensation for fish and wildlife losses, gifts, grants. The commission may enter into agreements with persons, municipal subdivisions of this state, the United States, or any of its agencies or instrumentalities regarding all matters concerning propagation, protection and conservation of wild animals, wild birds and game fish and concerning hunting or fishing therefor.

The commission may at any time on behalf of the state accept compensation for fish and wildlife losses or gifts or grants of personal property for use by the department. Any money, when received by the commission or the department, shall currently be delivered to the state treasurer for deposit in the state game fund: *Provided*, That any compensation for fish and wildlife losses or gifts or grants of money received by the commission under conditions, limitations or restrictions may be retained or expended by the commission under any such provisions. [1974 1st ex.s. c 67 § 1; 1955 c 36 § 77.12.320. Prior: 1947 c 275 § 37; Rem. Supp. 1947 § 5992-47.]

77.12.325 Cooperation with Oregon for protection, propagation of aquatic products. In addition and supplemental to any other powers and duties as provided by law, the game commission of the state of Washington is hereby authorized to cooperate with the fish and game commissions of the state of Oregon in the promulgation of rules and regulations to assure an annual yield of aquatic products on the Columbia river and to prevent the taking of these products at such places or at such times as might actually endanger the brood stock of such aquatic products. [1959 c 315 § 2.]

77.12.330 Areas may be set aside for use of minors. The commission may, by rule and regulation, set aside for exclusive fishing by minors within ages to be fixed by the commission certain described waters, lakes, rivers, or streams. If any such waters, lakes, rivers, or streams are so set aside, all fishing shall be in accordance with rules and regulations of the commission which may be prescribed therefor and the commission may thereby exclude all persons excepting minors within the ages specified from fishing therein. [1955 c 36 § 77.12.330. Prior: 1947 c 275 § 38; Rem. Supp. 1947 § 5992-48.]

77.12.340 Acquisition of property for office, storage, warehouse, and garage facilities. The commission is hereby authorized and directed to acquire by gift, purchase, or condemnation, in the manner provided by law for the acquisition of property for public purposes, such land and premises, such building for the office of the department of game, and such property as may be necessary for storage, warehouse and garage facilities of said department. [1955 c 36 § 77.12.340. Prior: 1947 c 138 § 1; Rem. Supp. 1947 § 10898-35.]

77.12.350 Construction of facilities authorized. The commission is further authorized, whenever such land and premises have been acquired, to cause to be constructed thereon a building for the offices, storage, warehouse and garage facilities aforesaid. [1955 c 36 § 77.12.350. Prior: 1947 c 138 § 2; Rem. Supp. 1947 § 10898-36.]

77.12.360 Use of state land for game purposes. The department of natural resources is authorized upon receipt of written request from the department of game, such request bearing the endorsed approval of the board of county commissioners as hereafter provided if the hereafter described land was acquired by the state pursuant to the authority in RCW 76.12.030 or RCW 76.12.080, to withdraw from lease any state owned lands described or designated in such request if the board of natural resources finds that such withdrawal will be in conformity to the state outdoor recreation plan and upon the condition that the common school fund or any other fund for which the described or designated lands are held shall be paid any sum or sums which the lease of said described or designated lands would increase such fund. [1969 ex.s. c 129 § 3; 1955 c 36 § 77.12.360. Prior: 1947 c 130 § 1; Rem. Supp. 1947 § 8136-10.]

77.12.370 Approval by board of county commissioners—Hearing. Prior to the forwarding of any such request to the commissioner of public lands the commission shall present the same to the board of county commissioners of the county wherein the lands to be withdrawn are located and have endorsed thereon the approval of the said board. In the event said board, before approving or disapproving said request, shall deem it advisable it may set the time and place for and call a public hearing. No such hearing shall take place within thirty days from the time of presentation of the request to the board.

The commission shall publish a notice of all public hearings so set by the board, in a newspaper of general circulation, within the county wherein the lands sought to be withdrawn are located, at least once a week for two successive weeks in advance of any hearing. Such notice shall contain a copy of the request and the time and place for holding the hearing.

The chairman of the board of county commissioners shall be chairman of any such public hearing and the proceedings of the hearing shall be informal with all persons being given reasonable opportunity to be heard.

Within ten days after any such hearing the board of county commissioners shall endorse upon the request for withdrawal, its approval or disapproval thereof. The decision of the said board shall be final and there shall be no appeal allowed therefrom. [1955 c 36 § 77.12.370. Prior: 1947 c 130 § 2; Rem. Supp. 1947 § 8136-11.]

77.12.380 Appraisal of lands—Lease value to be vouchered. Upon receipt of any such approved request if in the judgment of the commissioner of public lands the requested withdrawal of the lands as designated or described in such request would be of benefit to the

people of the state, he shall immediately cause an appraisal to be made of the lease value of such lands and before withdrawal of any such lands, he shall require that the department of game, acting through the director thereof, transmit to him a voucher drawn against the state game fund in favor of the particular fund for the benefit of which such lands are held and in such amount as shall represent the lease value, dependent upon such time as shall be shown in the request of the commission for which such lands are to be withdrawn. [1955 c 36 § 77.12.380. Prior: 1947 c 130 § 3; Rem. Supp. 1947 § 8136-12.]

77.12.390 Warrant to be drawn in favor of fund for which lands were held. Upon receipt of any voucher, the commissioner of public lands shall immediately execute the same and cause such lands to be withdrawn from lease. The said commissioner shall thereupon forward to the state treasurer the said voucher and the state treasurer shall thereupon draw a warrant against the state game fund and in favor of the particular fund for which the withdrawn lands have been theretofore held. [1973 c 106 § 35; 1955 c 36 § 77.12.390. Prior: 1947 c 130 § 4; Rem. Supp. 1947 § 8136-13.]

77.12.400 Lease of certain state lands as game lands authorized. The department is authorized to lease any state-owned lands situated in Yakima and Kittitas counties for use as game lands at the prevailing rates of leases, and payment for such leases may be made out of any funds appropriated to the department for land acquisition and development. [1955 c 36 § 77.12.400. Prior: 1949 c 238 § 8.]

77.12.410 Grazing of cattle on such state lands—Limitation of elk population. The present lessees of such state-owned lands shall be allowed to graze without cost such number of livestock as shall be determined by the game commission, commissioner of public lands and a representative of the Washington Cattlemen's Association on the basis of the capacity of such lands for this purpose, that the population of elk will be not more than three thousand west and south of the Yakima river in Yakima and Kittitas counties. [1955 c 36 § 77.12.410. Prior: 1949 c 238 § 9.]

Grazing ranges: Chapter 79.28 RCW.

77.12.420 Improvement of conditions for growth of fish life. The director of game, with the consent and approval of the commission, is empowered to expend such sums as they deem advisable within the limits of available appropriations from the state game fund, for the purpose of improving natural conditions for the growth of fish life in the state by means of construction of fishways, installation of screens, removal of obstructions to migratory fish, eradicating undesirable types of fish by means of poisoning, and such other methods as they shall deem advisable and practical, and is further empowered to enter into cooperative agreements with state, county and federal municipal agencies, and with private individuals for the purpose of carrying on the

work of this type. [1955 c 36 § 77.12.420. Prior: 1947 c 127 § 1; Rem. Supp. 1947 § 5944-1.]

77.12.430 Wildlife restoration—Federal act accepted. The state hereby assents to the purposes and provisions of the act of congress entitled: "An Act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes," approved September 2, 1937 (Public No. 415, 75th congress), and the department shall perform such acts as may be necessary to establish and conduct cooperative wildlife restoration projects, as defined in said act of congress, in compliance therewith and with rules and regulations promulgated by the Secretary of Agriculture thereunder. [1955 c 36 § 77.12.430. Prior: 1939 c 140 § 1; RRS § 5855-12.]

77.12.440 Fish restoration and management projects—Federal act accepted. The state of Washington hereby assents to the purposes and provisions of that certain act of congress entitled: "An Act to provide that the United States shall aid the states in fish restoration and management projects, and for other purposes," approved August 9, 1950 (Public, No. 681, 81st congress), and the state department of game is hereby authorized, empowered, and directed to perform such acts as may be necessary to establish, conduct, and maintain fish restoration and management projects, as defined in said act of congress in compliance with said act and with rules and regulations promulgated by the Secretary of the Interior thereunder. [1955 c 36 § 77.12.440. Prior: 1951 c 124 § 1.]

77.12.450 Snake river forming boundary with Idaho—Cooperation with Idaho fish and game commission for promulgation and enforcement of rules and regulations. In addition and supplemental to any other powers and duties as provided by law, the commission is hereby authorized to cooperate with the Idaho fish and game commission in the promulgation and enforcement of rules and regulations regarding licenses, possession limits and other regulations affecting game animals, game birds and game fish on that portion of the Snake River that forms the boundary between the states of Washington and Idaho. [1967 c 62 § 1.]

77.12.460 Snake river forming boundary with Idaho—Unlawful acts in violation of Idaho or Washington laws or regulations. The fishing for or taking of any fish by any device whatsoever, or the placing, maintaining or using of any net, seine, trap or other fishing device of any character, in or on the waters of the Snake River, where the same forms the boundary between the state of Washington and the state of Idaho, at any time or in any manner prohibited by the laws or lawfully established rules or regulations of either the state of Washington or the state of Idaho, or the department of fisheries or the department of game thereof, is hereby prohibited and made unlawful. [1967 c 62 § 2.]

77.12.470 Snake river forming boundary with Idaho—Concurrent jurisdiction of Idaho and Washington courts and administrative officers. For the purpose of enforcing the provisions of RCW 77.12.450 through 77.12.490, the courts of this state sitting in the various counties contiguous to said waters, and officers of this state empowered to enforce laws pertaining to game fish, game birds and game animals are hereby given and shall have jurisdiction over the entire boundary waters aforesaid to the furthestmost shoreline, and concurrent jurisdiction with the courts and administrative officers of the state of Idaho over the said boundary waters and the whole thereof is hereby expressly recognized and established. [1967 c 62 § 3.]

77.12.480 Snake river forming boundary with Idaho—Honoring fish and game licenses of either state. The right to take game fish, game birds, or game animals from the waters of the Snake River or the islands of the Snake River, where the same forms the boundary line between the state of Idaho and the state of Washington, by the holder of either an Idaho or a Washington license in accordance with the fish and game laws of the respective states is hereby recognized and made lawful and it shall be the duty of law enforcement officers to honor the license of either state and the right of the holder thereof to take game fish, game birds, or game animals from said waters and said islands in accordance with the laws of said state issuing said license. [1967 c 62 § 4.]

77.12.490 Snake river forming boundary with Idaho—Purpose—Restrictions on areas in which licenses may fish or hunt. The purpose of RCW 77.12.450 through 77.12.490 is to avoid the conflict, confusion and difficulty of an attempt to find the exact location of the state boundary in or on said waters and on said islands of the Snake River, and shall not be construed to permit the holder of a Washington license to fish or hunt on the shoreline, sloughs or tributaries on the Idaho side, nor permit the holder of an Idaho license to fish or hunt on the shoreline, sloughs or tributaries on the Washington side. [1967 c 62 § 5.]

77.12.500 Agreements with owners or lessees of real property for use for public hunting or fishing. The commission, acting by and through the director, may enter into written agreements with the owners or lessees of real property providing for the use of such real property for public hunting and fishing. The commission may establish rules and regulations governing the conduct of any persons who are in or on such real property pursuant to any such agreements for the purpose of hunting or fishing. [1967 c 45 § 1.]

77.12.510 Managed marine mammals—Rules and regulations as to capture, sale, confinement, etc.—Permits. The commission shall from time to time, adopt, promulgate, amend, or repeal, and enforce reasonable rules and regulations governing the time, place, and manner or prohibiting the capture or taking of managed marine mammals, the quantities, species, sex and size

that may be captured or taken, and the transportation, sale, and confinement of managed marine mammals.

The commission may, acting through the director, issue permits for the taking or capture of managed marine mammals for scientific research, display, or propagation purposes: *Provided*, That a managed marine mammal may be taken without permit when it constitutes a threat to human life or is causing substantial damage to private property. [1971 ex.s. c 166 § 6.]

"Managed marine mammals" defined: RCW 77.08.050.

Chapter 77.16

PROHIBITED ACTS AND PENALTIES

Sections

- 77.16.010 Game derbies—Permit—Rules and regulations.
- 77.16.020 Taking during closed season—Exceeding bag limits—Taking within reserves.
- 77.16.030 Possession during closed season or in excess of bag limits.
- 77.16.040 Trafficking in game or endangered species of fish or wildlife prohibited—Exception—Common and contract carriers.
- 77.16.050 Artificial lights prohibited in big game hunting.
- 77.16.060 Explosives, medicated bait, etc., prohibited in game fishing.
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- 77.16.210 Fishways to be provided at dams—Abatement of obstructions.
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- 77.16.230 Game doing damage may be taken at any time—Limitations.
- 77.16.240 General penalty—Jurisdiction of courts.
- 77.16.250 Carrying loaded shotgun or rifle in vehicles.
- 77.16.260 Shooting firearm on public highway—Firing artillery across highway.
- 77.16.270 Enforcement.
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- 77.16.290 Law enforcement officers excluded.
- 77.16.300 Venue of prosecution.

Alien's license to carry firearms: RCW 9.41.170.

Destroying young of birds or animals: RCW 9.61.040.

Hunting or trapping animals in cemeteries, parks or reserve areas: RCW 9.61.040.

Use of spring guns: RCW 9.41.180.

77.16.010 Game derbies—Permit—Rules and regulations. It shall be unlawful for any person to promote, conduct, hold, or sponsor any contest for the hunting of wild animals or wild birds or for fishing for game fish under any competitive arrangement without

first securing a hunting or fishing contest permit from the director and paying the department one dollar therefor.

Such permits may be issued by the director under, and all such contests shall be held in accordance with, rules and regulations which the commission shall adopt concerning the times, places and manner of holding such contests. The commission may prohibit any or all such contests whenever, in its opinion the propagation, preservation or conservation of wild animals, wild birds or game fish will be injuriously affected if such contest is permitted. [1955 c 36 § 77.16.010. Prior: 1947 c 275 § 39; Rem. Supp. 1947 § 5992–49.]

77.16.020 Taking during closed season—Exceeding bag limits—Taking within reserves. It shall be unlawful for any person to hunt, trap, or fish for any game birds, game animals, fur-bearing animals or game fish during the respective closed seasons therefor. It shall also be unlawful for any person to kill, take, or catch any species of game birds, game animals, fur-bearing animals, or game fish in excess of the number fixed as the bag limit. It shall also be unlawful for any person to hunt or trap for any game birds, game animals, or fur-bearing animals within the boundaries of any game reserve or closed area, and it shall likewise be unlawful for any person to fish for any game fish within any closed waters or within the boundaries of any game fish reserve.

Any person who hunts or traps any elk, moose, antelope, mountain goat, mountain sheep, caribou or deer in violation of this section is guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not less than thirty days and not more than one year or by both such fine and imprisonment.

Any person who hunts or traps any game bird in violation of this section is guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars and not more than one hundred dollars or by imprisonment in the county jail for not less than ten days and not more than thirty days or by both such fine and imprisonment. [1955 c 36 § 77.16.020. Prior: 1947 c 275 § 41; Rem. Supp. 1947 § 5992–50.]

77.16.030 Possession during closed season or in excess of bag limits. It shall be unlawful for any person to have in his possession or under his control any game bird, nongame bird, game animal, fur-bearing animal, or game fish, or part thereof, during the closed season or in excess of the bag limit.

Any person who has in his possession or under his control any elk, moose, antelope, mountain goat, mountain sheep, caribou, deer, or part thereof in violation of the foregoing portion of this section is guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not less than thirty days and not more than one year or by both such fine and imprisonment.

Any person who has in his possession or under his control any game bird or part thereof in violation of the foregoing portion of this section is guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars and not more than one hundred dollars or by imprisonment in the county jail for not less than ten days and not more than thirty days or by both such fine and imprisonment.

Provided, That any person who has lawfully acquired possession of any game bird, game animal, or game fish, or part thereof, and who desires to retain it for human consumption or ornamental purposes, or desires to sell the skin, hide, horns, head, or plumage thereof, after the close of the season may do so in accordance with the rules and regulations of the commission.

Provided, further, That the owner of any game bird, nongame bird, game animal, fur-bearing animal, or game fish, who has lawfully propagated it or purchased from one who has so propagated it, may possess, ship, sell or otherwise dispose of such bird, animal, or fish, when properly tagged or sealed. [1955 c 36 § 77.16.030. Prior: 1947 c 275 § 42; Rem. Supp. 1947 § 5992-51.]

77.16.040 Trafficking in game or endangered species of fish or wildlife prohibited—Exception—Common and contract carriers. Except as authorized by permit or license lawfully issued by the director, or by rule or regulation of the commission, it shall be unlawful for any person to have in his possession for sale or with intent to sell, or to expose or offer for sale or to sell or to barter for, or to exchange, or to buy, or to have in his possession with intent to ship, or to ship, any game animal, game bird, game fish, or endangered species of fish or wildlife or any part thereof or any article made in whole or part from the skin, hide, or other parts of any endangered species of fish or wildlife. It shall further be unlawful for any common or contract carrier knowingly to transport or receive for shipment any such game animal, game bird, or fish, or endangered species of fish or wildlife or any part thereof or any article made in whole or part from the skin, hide, or other parts of any endangered species of fish or wildlife: *Provided*, That nothing contained in this section shall prohibit any person from buying, selling, or shipping any lawfully tagged or sealed game animal, game bird, or game fish purchased from a licensed game farmer.

Any person violating this section shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not less than thirty days and not more than one year or by both such fine and imprisonment. [1971 ex.s. c 166 § 4; 1961 c 75 § 1; 1955 c 36 § 77.16.040. Prior: 1947 c 275 § 43; Rem. Supp. 1947 § 5992-52.]

Endangered species of fish or wildlife defined: RCW 77.08.030.

77.16.050 Artificial lights prohibited in big game hunting. It shall be unlawful for any person to hunt any elk, moose, antelope, mountain goat, mountain sheep, caribou or deer with a jack light or other artificial light of any kind and to be found with any torch, lantern,

electric, acetylene, gas or other artificial light and with any rifle, shotgun, or other firearm, after sunset, in any wooded section or other place where any of the above mentioned animals may reasonably be expected, shall be prima facie evidence of unlawful hunting. Any person violating the provisions of this section is guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or imprisonment of not less than thirty days and not more than one year in the county jail or by both such fine and imprisonment. [1955 c 36 § 77.16.050. Prior: 1947 c 275 § 44; Rem. Supp. 1947 § 5992-53.]

77.16.060 Explosives, medicated bait, etc., prohibited in game fishing. It shall be unlawful for any person to lay, set, use, or prepare any drug, poison, lime, medicated bait, nets, fish, berries, formaldehyde, dynamite, or other explosives, or any tip-up, snare or net, or trot line, or any wire, string, rope, or cable of any kind, in any of the waters of this state with intent thereby to catch, take or kill any game fish. It shall be unlawful to lay, set or use a net capable of taking game fish in any waters of this state except as permitted by regulation of the department of fisheries: *Provided*, That persons may use small landing nets or under written permit issued by the director may use nets or seines in the taking of nongame fish.

Any person violating any of the provisions of this section is guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not less than thirty days and not more than one year or by both such fine and imprisonment. [1955 c 36 § 77.16.060. Prior: 1947 c 275 § 45; Rem. Supp. 1947 § 5992-54.]

77.16.070 Hunting while intoxicated. It shall be unlawful for any person to hunt with firearms while under the influence of intoxicating liquor. [1955 c 36 § 77.16.070. Prior: 1947 c 275 § 45a; Rem. Supp. 1947 § 5992-55.]

77.16.080 Laying out poison, etc., endangering game. It shall be unlawful for any person to lay, set, or use any poisonous or deleterious substances in any place or manner so as to endanger, injure or kill any game animals, fur-bearing animals, game birds or nongame birds. [1955 c 36 § 77.16.080. Prior: 1947 c 275 § 46; Rem. Supp. 1947 § 5992-56.]

77.16.090 Mutilating or needlessly wasting carcasses. It shall be unlawful for any person to permit any game animal, fur-bearing animal, game bird, or game fish needlessly to go to waste after killing the same or to mutilate any such animal or bird so that the species or sex cannot be determined. [1955 c 36 § 77.16.090. Prior: 1947 c 275 § 47; Rem. Supp. 1947 § 5992-57.]

77.16.100 Use of dogs—Field trials for bird dogs. It shall be unlawful to allow dogs of any kind to accompany any person while such person is hunting deer

or elk. Any dog found pursuing any game animal or game bird, or molesting the young of any game animal or game bird or destroying the nest of any game bird during the closed season on game animals or game birds may be declared to be a public nuisance. In addition to any penalty imposed by a court of competent jurisdiction, the court may order the dog destroyed.

During the months of April, May, June and July of each year it shall be unlawful to allow bird dogs, or dogs used for hunting upland game birds, to frequent areas where upland game birds may reasonably be expected to be found.

Competitive field trials for hunting dogs, with or without the shooting or use of privately owned birds, may be held only at such times and places, and under such rules and regulations, as shall be prescribed by the commission. [1955 c 36 § 77.16.100. Prior: 1947 c 275 § 48; Rem. Supp. 1947 § 5992–58.]

77.16.110 Firearms, traps and dogs on game reserves. It shall be unlawful for any person to carry firearms or traps within the limits of or take any dog upon a game reserve except on public highways. The director may issue permits to persons holding fishing and hunting licenses for the current year to hunt predatory animals and predatory birds in such reserve at any season of the year, and all bona fide residents therein may keep a dog or dogs as otherwise provided by law. Permits may also be issued for rifle ranges, gun clubs, and shooting galleries which in the judgment of the director will not injure or disturb the game in a reserve. [1955 c 36 § 77.16.110. Prior: 1947 c 275 § 50; Rem. Supp. 1947 § 5992–59.]

77.16.120 Taking of nongame birds—Destruction of nests or eggs of birds. Except as lawfully authorized by permit or license issued by the director, it shall be unlawful for any person to hunt or trap any nongame bird or harmless or song bird or to have in his possession or under his control any of such birds or any part thereof, and unless acting under permit or license so issued, it shall be unlawful for any person to destroy or to have in his possession or under his control the nest or eggs of any game bird, nongame bird, or harmless or song bird. [1955 c 36 § 77.16.120. Prior: 1947 c 275 § 51; Rem. Supp. 1947 § 5992–60.]

Destroying birds' eggs: RCW 9.61.040.

Destroying young of birds or animals: RCW 9.61.040.

77.16.130 Resisting or obstructing officers. It shall be unlawful for any person to resist or obstruct the director, a game protector, deputy, or ex officio game protector, or other peace officer in the discharge of his duty while enforcing the provisions of this title. [1955 c 36 § 77.16.130. Prior: 1947 c 275 § 52; Rem. Supp. 1947 § 5992–61.]

77.16.140 Giving misinformation as to bountied predator. Every person who gives untrue or misleading information as to the time, area, or county in which any predatory animal or bird was hunted, trapped, taken, or killed on which a bounty is being claimed shall be

guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not more than one year or by both such fine and imprisonment. [1955 c 36 § 77.16.140. Prior: 1947 c 275 § 53; Rem. Supp. 1947 § 5992–62.]

77.16.150 Permit required to plant fish, plants, or release animals or birds. Except as authorized by permit or license lawfully issued by the director, and after departmental inspection of the matter sought to be planted, it shall be unlawful for any person to plant any fish, fish fry, spawn, or any aquatic plant in any waters within the state or to release any wild animals or wild birds on any lands within the state. The words "aquatic plant" include the seeds thereof. [1955 c 36 § 77.16.150. Prior: 1951 c 126 § 1; 1947 c 275 § 54; Rem. Supp. 1947 § 5992–63.]

77.16.157 Penalty for violations. The provisions of RCW 77.16.240 shall apply to all violations of RCW 77.16.150 and 77.16.155. [1955 c 36 § 77.16.157. Prior: 1951 c 126 § 3.]

77.16.158 Importation, possession, sale, exchange, etc., of deleterious exotic species of fish or wildlife—Penalty. Except as authorized by permit or license lawfully issued by the director, or by rule or regulation of the commission, it shall be unlawful for any person to bring into the state, have in his possession within the state, have in his possession for sale or with intent to sell or to expose or offer for sale, or to sell, or to barter for, or to exchange, or to buy, or to have in his possession with intent to ship, or to ship any deleterious exotic species of fish or wildlife. It shall further be unlawful for any common or contract carrier knowingly to transport or receive for shipment any such deleterious exotic species of fish or wildlife.

Any person violating this section shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not less than thirty days and not more than one year or by both such fine and imprisonment. [1971 ex.s. c 166 § 3.]

"Deleterious exotic species of fish or wildlife" defined: RCW 77.08.040.

77.16.160 Injuring fish ladders, guards, screens, etc. It shall be unlawful for any person to break open, open, unlock, damage, interfere with, injure, or destroy any fish ladder, fish guard, screen, fish stop, fish protective device, bypass, or part thereof, or any fish trap operated by the department. [1955 c 36 § 77.16.160. Prior: 1947 c 275 § 55; Rem. Supp. 1947 § 5992–64.]

77.16.170 Robbing or injuring traps—Identification of traps. It shall be unlawful for any person to take any wild animal from a trap not his own, or to spring, pull up, throw away, mutilate, or destroy any trap of licensed trappers, game protectors, or persons employed by the director, or any person authorized by the federal

government to catch fur-bearing or predatory animals. All licensed trappers shall have attached to the chain of the trap an indestructible tag with the true name and address of the owner of trap in English letters not less than one-eighth inch in height. [1955 c 36 § 77.16.170. Prior: 1947 c 275 § 56; Rem. Supp. 1947 § 5992-65.]

77.16.180 Mutilating signs. It shall be unlawful for any person to destroy, tear down, shoot at, deface, or erase any printed matter or signs placed or posted by or under the instructions of the director. [1955 c 36 § 77.16.180. Prior: 1947 c 275 § 57; Rem. Supp. 1947 § 5992-66.]

77.16.190 Unlawful posting of land. It shall be unlawful for any person or his agent or employee wilfully to post any notice or warning or wilfully to warn, drive, or attempt to drive, any person off, or prevent his hunting or fishing on any land not owned or lawfully occupied by such person, his agent, or employee, unless such land is a lawfully established game or game fish reserve. [1955 c 36 § 77.16.190. Prior: 1947 c 275 § 58; Rem. Supp. 1947 § 5992-67.]

77.16.200 Private publication of game laws. No person shall print or cause to be printed a booklet or pamphlet of the game laws or portion thereof except with the approval of the director. [1955 c 36 § 77.16.200. Prior: 1947 c 275 § 59; Rem. Supp. 1947 § 5992-68.]

77.16.210 Fishways to be provided at dams—Abatement of obstructions. Any person or governmental agency managing, controlling, or owning any dam or other obstruction across any river or stream shall construct and maintain in good condition and repair in connection with such dam or other obstruction durable fishways and fish protective devices in such shape and size that the free passage of all game fish inhabiting such waters will not be obstructed. Such fishways and fish protective devices shall be provided at all times with sufficient water to insure maximum efficiency for the free passage of fish.

Any person violating any of the provisions of this section shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not less than ninety days and not more than one year or by both such fine or imprisonment.

In addition to the penalty above provided, if any such person be convicted of violating any of the provisions of this title, the dam or other obstruction managed, controlled or owned by such person is hereby declared a public nuisance and shall be subject to abatement as such. [1955 c 36 § 77.16.210. Prior: 1947 c 275 § 60; Rem. Supp. 1947 § 5992-69.]

77.16.220 Screens to be provided at diversion ditches and canals. It shall be unlawful for any person to divert any water from any lake, river, or stream containing game fish unless the ditch, channel, canal, or water pipe

conducting such water is equipped at or near its entrance or intake with a fish guard or screen capable of preventing the passage of game fish into such ditch, channel, or water pipe, and also equipped, if necessary, with a bypass to permit the passage of game fish from immediately in front of the fish guard or screen back to the waters from which said fish are diverted: *Provided*, That no person who is now otherwise lawfully diverting water from any lake, river, or stream shall be deemed guilty of a violation of this section.

It shall also be unlawful for any person who is not now diverting water from any lake, river, or stream to divert any water therefrom until he has first submitted plans for the fish guard, fish screen, or bypass to the director, obtained his approval thereof, installed such fish guard, screen, or bypass, and obtained the director's approval of such installation. It shall be unlawful for any person to construct any such fish guard, fish screen, or bypass without first submitting plans therefor to the director and obtaining his approval thereof as herein provided.

The director may summarily close any ditch, canal, channel, or water pipe owned or operated by any person convicted of any violation of this section and keep the same closed until it is properly equipped with a fish guard, screen, or bypass, in accordance with the provisions herein. [1955 c 36 § 77.16.220. Prior: 1947 c 275 § 61; Rem. Supp. 1947 § 5992-70.]

77.16.221 Director may modify, etc., inadequate fishways and protective devices. In the event any fish passage facility or fish protective device as set forth in RCW 77.16.210 and 77.16.220 which have been in existence or are existing at the time of enactment of this act, is determined by the director to be inadequate for the purposes for which it was intended; the director in addition to other authority granted in this chapter may in his discretion, remove, relocate, reconstruct, or modify said device, without cost for materials and labor to the owner or owners thereof: *Provided*, That the director may not materially modify the amount of flow of water through the facility or device. Thereafter such fish passage facility or fish protective device shall be maintained at the expense of the person or governmental agency owning said obstruction or water diversion in accordance with RCW 77.16.210 and 77.16.220. [1963 c 152 § 1.]

Director of fisheries may modify, etc., inadequate fishways and protective devices: RCW 75.20.061.

77.16.230 Game doing damage may be taken at any time—Limitations. It shall be lawful for the owner or tenant of any real property on which any crop is being grown or any domestic animals or fowl are being kept to trap or kill at any time on such property, any wild animal or wild bird which is destroying any such crop, or injuring domestic animals or fowl, or any dike, drain or irrigation ditch. Such wild animal or wild bird, when so trapped or killed, shall remain the property of the state, and the person trapping or killing the same shall immediately notify the nearest state game protector as to where such wild animal or wild bird may be found.

It shall be unlawful for any person, after trapping or killing any wild animal or wild bird as above provided, to give away, eat, sell, or dispose of the same or any part thereof for profit: *Provided*, That this section shall not prohibit any license holder from trapping, killing, possessing, or disposing of any wild animal or wild bird as otherwise provided by law or rule and regulation of the commission.

For purposes of this section the word "crop" is defined as meaning an agricultural or horticultural seeded or planted crop and shall exclude all wild shrubs and range land. [1955 c 36 § 77.16.230. Prior: 1949 c 238 § 2; 1947 c 275 § 62; Rem. Supp. 1949 § 5992-71.]

77.16.240 General penalty—Jurisdiction of courts. Any person violating or failing to comply with any rule or regulation of the commission or violating any of the provisions of this title for which no penalty is provided, shall be guilty of a misdemeanor and shall be punished for each offense by a fine of not less than ten dollars, together with the cost of prosecution, or by imprisonment for not exceeding ninety days in the county jail or by both such fine and imprisonment. The killing or taking of every single bird, animal or fish, protected by the laws of this state, shall constitute a separate offense.

Every justice of the peace shall have jurisdiction concurrent with the superior courts of all misdemeanors and gross misdemeanors committed in violation of the provisions of this title and may impose any punishment in this title provided for such offenses. [1955 c 36 § 77.16.240. Prior: 1947 c 275 § 63; Rem. Supp. 1947 § 5992-72.]

77.16.250 Carrying loaded shotgun or rifle in vehicles. It shall be unlawful for any person to carry, transport or convey, or to have in his possession or under his control in any motor-driven or horse-drawn vehicle or in any vehicle propelled by man, any shotgun or rifle containing shells or cartridges therein. [1955 c 36 § 77.16.250. Prior: 1947 c 126 § 1; Rem. Supp. 1947 § 2545-1.]

77.16.260 Shooting firearm on public highway—Firing artillery across highway. It shall be unlawful for any person to shoot any pistol, rifle, shotgun or other firearm from, across or along any public highway. This section shall not apply to artillery fire from authorized military activities within the confines of the Fort Lewis military reservation if proper precautions are taken to safeguard life and property if the authority conducting the military maneuvers assumes responsibility for any damages therefrom resulting to users of the highway. No public highway shall be closed to traffic by the military for purposes hereunder without the consent of the governing body exercising jurisdiction over the highway. [1955 c 85 § 1; 1955 c 36 § 77.16.260. Prior: 1947 c 126 § 2; Rem. Supp. 1947 § 2545-2.]

77.16.270 Enforcement. It shall be the duty of all sheriffs, deputy sheriffs, constables, city marshals, police officers, state game protectors, deputy game protectors, and ex officio game protectors, within their respective

jurisdictions, to enforce all of the provisions of RCW 77.16.250 and 77.16.260. [1955 c 36 § 77.16.270. Prior: 1947 c 126 § 3; Rem. Supp. 1947 § 2545-3.]

77.16.280 Penalty. Any person violating any of the provisions of RCW 77.16.250 and 77.16.260 shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars and not more than one hundred dollars or by imprisonment in the county jail for not less than ten days and not more than ninety days or by both such fine and imprisonment. [1955 c 36 § 77.16.280. Prior: 1947 c 126 § 4; Rem. Supp. 1947 § 2545-4.]

77.16.290 Law enforcement officers excluded. The word "person" as used in RCW 77.16.250 and 77.16.260 does not include any law enforcement officer who is authorized to carry firearms. [1955 c 36 § 77.16.290. Prior: 1947 c 126 § 5; Rem. Supp. 1947 § 2545-5.]

77.16.300 Venue of prosecution. Any action charging a violation of RCW 77.16.250 through 77.16.290 shall be instituted in the justice court in one of the two incorporated cities or towns nearest the place where the violation is alleged to have been committed. [1955 c 36 § 77.16.300. Prior: 1947 c 126 § 6; Rem. Supp. 1947 § 2545-6.]

Chapter 77.20 BEAVER

Sections

77.20.010	Beaver may be taken or possessed—Pelts may be sold.
77.20.015	Licensed residents may take—Beaver tags required, fee, style, duration.
77.20.016	Beaver tags—Possession, attachment—Purchase of untagged skin—Penalty.
77.20.020	Rules and regulations—Cooperative agreements.
77.20.030	Beaver skins, disposal of.
77.20.040	Taking of beaver doing damage on private lands—On public lands—By commission.
77.20.045	Taking of beaver doing damage—By owner or occupant—Notice—Surrender of pelts.
77.20.050	Preservation, tagging, of skins.
77.20.060	Penalty.

77.20.010 Beaver may be taken or possessed—Pelts may be sold. For the purpose of properly administering, perpetuating, protecting, and maintaining the beaver of the state, the same is hereby declared to be a fur-bearing animal and may be hunted, trapped, killed, or possessed, or the pelts thereof sold, as provided in this chapter. [1963 c 177 § 1; 1955 c 36 § 77.20.010. Prior: 1947 c 275 § 64; Rem. Supp. 1947 § 5992-73.]

77.20.015 Licensed residents may take—Beaver tags required, fee, style, duration. It shall be lawful for any resident, licensed under RCW 77.32.190, to trap, hunt, or kill beaver for their skins in such areas and at such times as the commission by rule or regulation may permit.

It shall be unlawful for a licensee to trap, hunt, or kill beaver without first having procured from the director a tag or tags to be known as supplemental beaver tags. The fee for issuing and procuring each tag shall be one

dollar and shall be paid in addition to all other license fee prescribed by law. Beaver tags shall be prepared and distributed under the supervision of the director in such number and manner each year as he deems advisable. The tags shall bear the name "department of game of the state of Washington" and the year for which it is issued, and any other distinguishing marks deemed necessary by the director. The tags shall be void on the first day of April next following the date of issuance. [1963 c 177 § 10.]

77.20.016 Beaver tags—Possession, attachment—Purchase of untagged skin—Penalty. Beaver tags shall be in the possession of all persons while they are engaged in trapping beaver. Any person who traps a beaver shall as soon as feasible attach one of his tags to the skin. No person shall purchase from any trapper any skin that does not bear a supplemental beaver tag.

Any person violating any provision of this section shall be subject to the penalties provided in RCW 77.20.060. [1963 c 177 § 11.]

77.20.020 Rules and regulations—Cooperative agreements. The commission may make reasonable rules and regulations for purposes of administration and enforcement of the laws pertaining to beaver and regulating the propagation, hunting, trapping, killing, and possession of beaver and the sale of beaver skins. The commission, through the director, may enter into cooperative agreements with private landowners for the hunting, trapping, and killing of beaver upon the land of such owners. Under such agreements the commission, through the director, shall designate the maximum number of beaver which may be taken each year from the land of the owner. All taking, hunting, trapping, or killing of beaver under cooperative agreements shall be done only by the commission, acting through the director or his duly authorized representatives, with costs thereof to be paid out of the state game fund. [1963 c 177 § 2; 1955 c 36 § 77.20.020. Prior: 1947 c 275 § 65; Rem. Supp. 1947 § 5992–74.]

77.20.030 Beaver skins, disposal of. All beaver skins obtained by the director or his representatives under this title shall be sold to licensed fur buyers only at auction to the highest bidder. The time of any sale shall be within the discretion of the director. From the proceeds of sales there shall be paid to the owner of the land upon which the beaver was taken under any cooperative agreement, such amount as was stipulated therein and the balance of the proceeds shall be deposited in the state game fund. In the making of any cooperative agreement under the provisions of this title, the commission, through the director, may provide for such compensation to the landowner as may be deemed just and reasonable based upon a percentage payment per pelt sold or upon a fixed fee basis or otherwise. [1963 c 177 § 3; 1955 c 36 § 77.20.030. Prior: 1947 c 275 § 66; Rem. Supp. 1947 § 5992–75.]

77.20.040 Taking of beaver doing damage on private lands—On public lands—By commission. The commission, through the director or his duly authorized representatives, may hunt, trap, or kill beaver on private lands when the owners thereof are suffering damage. Beaver may likewise be hunted, trapped, or killed on public lands by the director or his duly authorized representatives whenever and wherever the commission deems it necessary and advisable. [1963 c 177 § 4; 1955 c 36 § 77.20.040. Prior: 1947 c 275 § 67; Rem. Supp. 1947 § 5992–76.]

77.20.045 Taking of beaver doing damage—By owner or occupant—Notice—Surrender of pelts. If beavers or other burrowing animals are damaging, or endangering any land the owner or occupant of such land may trap or kill such animals. If he does so, such person must notify the commission regarding the number of the animals disposed of and when possible, surrender the pelts thereto to the commission. [1963 c 177 § 5; 1955 c 36 § 77.20.045. Prior: 1951 c 262 § 1.]

77.20.050 Preservation, tagging, of skins. Prior to sale all beaver skins to be sold under the provisions of RCW 77.20.030 shall be properly cared for, preserved, and tagged or sealed by the director or his representatives. [1963 c 177 § 6; 1955 c 36 § 77.20.050. Prior: 1947 c 275 § 68; Rem. Supp. 1947 § 5992–77.]

77.20.060 Penalty. The hunting, trapping, taking, or killing of any beaver or the possession of the skin or any part of any beaver killed within this state, except as authorized in this title, is unlawful, and any person hunting, trapping, taking, or killing any beaver or possessing the skin or any part thereof in violation of this title, shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment for not less than thirty days and not more than six months or by both such fine and imprisonment. [1955 c 36 § 77.20.060. Prior: 1947 c 275 § 69; Rem. Supp. 1947 § 5992–78.]

Chapter 77.24 PREDATORS—BOUNTIES

Sections	
77.24.010	Who may kill predators and claim bounties.
77.24.020	Payment of bounties—Maximum specified—Review.
77.24.030	Marking of bountied predators.
77.24.040	Commission may classify predators.
77.24.050	Employment of accredited hunters.
77.24.060	Disposition of skins and specimens.
77.24.070	Scope of chapter.
77.24.080	Bounty voucher must aggregate two dollars and fifty cents.
77.24.090	Cooperative programs to control predators.
77.24.100	Department of agriculture may cooperate with Fish and Wildlife Service.
77.24.110	Expenditures authorized.
77.24.120	Disposition of skins and specimens.

77.24.010 Who may kill predators and claim bounties. Any resident holder of a state or county hunting and fishing license may hunt, trap, take, or kill any animal or bird classified as predatory in areas and at times designated by the commission and may present such animal or bird to the director or to any person designated by the director as qualified to check bountied predators for payment of bounty. Any citizen of the United States under the age of sixteen years who has been an actual resident of the state for the preceding six months shall not be required to hold a state or county hunting and fishing license to comply with this chapter. [1955 c 36 § 77.24.010. Prior: 1947 c 275 § 72; Rem. Supp. 1947 § 5992–81.]

77.24.020 Payment of bounties—Maximum specified—Review. Whenever the holder of a state or county hunting and fishing license hunts, traps, takes, or kills any animal or bird classified by the commission as a predator, and furnishes proof thereof, he may be paid a bounty in such amount as specified by the rules and regulations of the commission. Any person who desires to collect a bounty shall furnish such proof and evidence of hunting, trapping, taking, or killing the predator as the commission may require. If the director has reason to doubt the validity of a bounty claim he may deny it, and if a bounty claim is denied, the bounty claimant may appeal to the superior court of the county in which the predators or any of them were hunted, trapped, taken, or killed. The burden of proof as to the method of hunting, trapping, taking, or killing and the area wherein the predator was hunted, trapped, taken, or killed shall be upon the bounty claimant.

Bounties, as fixed by the commission, may in no event exceed the following sums: Cougar, one hundred dollars; lynx, twenty-five dollars; bobcat, twenty-five dollars; coyote, twenty dollars; coyote pup, five dollars; any other animal or bird classified by the commission as predatory, five dollars.

Bounty payments shall be made from any moneys which may be appropriated therefor by the legislature. All moneys appropriated for such payments shall be expended under the direction of and upon vouchers approved by the director. [1955 c 36 § 77.24.020. Prior: 1947 c 275 § 73; Rem. Supp. 1947 § 5992–82.]

77.24.030 Marking of bountied predators. Before payment of a bounty, the animal or bird or such part thereof as shall be designated by the commission shall be surrendered to the director, or person designated by the director as qualified to check bountied predators, who shall mark such predator or part thereof in order that it can be later identified and, after so marking it, the director or designated person shall return the predator or part thereof to the person hunting, trapping, taking, or killing the same. [1955 c 36 § 77.24.030. Prior: 1947 c 275 § 74; Rem. Supp. 1947 § 5992–83.]

77.24.040 Commission may classify predators. The commission, upon finding any animal or bird destructive to wild game, domestic herds, birds, and flocks may

by rule and regulation classify it as predatory and authorize and control the hunting, trapping, taking, or killing thereof. [1955 c 36 § 77.24.040. Prior: 1947 c 275 § 75; Rem. Supp. 1947 § 5992–84.]

77.24.050 Employment of accredited hunters. The director shall, from time to time, appoint and employ such number of persons, skilled in hunting, trapping, taking or killing predatory animals and birds, as he deems advisable, to be known as accredited hunters, to carry on the work of eradication and control of predatory animals and birds in this state. [1955 c 36 § 77.24.050. Prior: 1947 c 275 § 76; Rem. Supp. 1947 § 5992–85.]

77.24.060 Disposition of skins and specimens. All skins and specimens taken by accredited hunters whose salaries are paid out of moneys appropriated from the state game fund shall be disposed of in such manner as the director determines to be for the best interest of the state. If any such skins or specimens are sold, the net proceeds shall be deposited to the credit of the state game fund. [1955 c 36 § 77.24.060. Prior: 1947 c 275 § 77; Rem. Supp. 1947 § 5992–86.]

77.24.070 Scope of chapter. Nothing herein shall be deemed in derogation of the power and authority of the director of agriculture to cooperate with the United States Fish and Wildlife Service in the control and destruction of predatory animals injurious to livestock, poultry, and the public health. [1955 c 36 § 77.24.070. Prior: 1947 c 275 § 78; Rem. Supp. 1947 § 5992–87.]

77.24.080 Bounty voucher must aggregate two dollars and fifty cents. For the purpose of facilitating the payment of bounties, no voucher therefor shall be issued in payment thereof until the aggregate bounty claim is at least two dollars and fifty cents. [1955 c 36 § 77.24.080. Prior: 1947 c 275 § 79; Rem. Supp. 1947 § 5992–88.]

77.24.090 Cooperative programs to control predators. The director may enter into cooperative programs to control predators with sportsmen's groups, granges, or others. [1955 c 36 § 77.24.090. Prior: 1947 c 275 § 80; Rem. Supp. 1947 § 5992–89.]

77.24.100 Department of agriculture may cooperate with Fish and Wildlife Service. The department of agriculture shall cooperate with the Fish and Wildlife Service, in the control and destruction of predatory animals which are injurious to livestock, poultry, game, and the public health, in accordance with organized and systematic plans of the Fish and Wildlife Service. For this purpose said department may enter into written agreements with the Fish and Wildlife Service covering the methods and procedure to be followed, the extent of supervision to be exercised by each and the use and expenditure of the funds appropriated therefor. The department, in cooperation with the Fish and Wildlife Service, may also enter into cooperative agreements with other governmental agencies, counties, or persons

when deemed necessary to promote the control and destruction of predatory animals. [1955 c 36 § 77.24.100. Prior: 1943 c 257 § 1; Rem. Supp. 1943 § 5992-2.]

77.24.110 Expenditures authorized. The department of agriculture may make such expenditures for equipment, materials, supplies, and other expenses, including expenditures for personal services, as may be necessary to execute the functions imposed upon it by RCW 77.24.100. [1955 c 36 § 77.24.110. Prior: 1943 c 257 § 2; Rem. Supp. 1943 § 5992-3.]

77.24.120 Disposition of skins and specimens. All skins and specimens taken by hunters whose salaries are paid out of funds appropriated for the administration of RCW 77.24.100 and 77.24.110 shall be disposed of in such manner as the department of agriculture determines to be in the best interest of the state. If any such skins or specimens are sold, the net proceeds shall be deposited to the credit of the general fund of the state. [1955 c 36 § 77.24.120. Prior: 1943 c 257 § 3; Rem. Supp. 1943 § 5992-4.]

Chapter 77.28 GAME FARMERS

Sections

77.28.010	License required.
77.28.020	License fee.
77.28.030	Application—Content.
77.28.040	Corporate application.
77.28.050	Issuance of license.
77.28.060	Rights acquired under license.
77.28.070	Game farmer may deal in game bird and game fish eggs.
77.28.080	Tagging of product.
77.28.090	Rights of common carriers.
77.28.100	Quarterly reports.
77.28.110	Access to game farmers' premises.
77.28.120	Revocation of license—Notice—Hearing.

77.28.010 License required. The acquisition, breeding, growing, keeping, and sale of wild animals, wild birds, or game fish, whether living or dead, for commercial purposes shall be unlawful unless such acquisition, breeding, growing, keeping and sale is conducted under a game farmer's license as hereinafter provided and in accordance with rules and regulations of the commission which may be prescribed therefor regarding the species of wild animals, wild birds, or game fish which may be acquired, bred, grown, kept, and sold under this title, the particular areas in this state wherein such activities may be carried on and the manner of conducting all such activities. [1955 c 36 § 77.28.010. Prior: 1947 c 275 § 81; Rem. Supp. 1947 § 5992-90.]

77.28.020 License fee. The director may cause to be issued a game farmer's license that shall authorize the licensee to acquire, grow, breed, keep, or sell all or some of such species of wild animals, wild birds, and game fish as may be designated by the commission as suitable for such acquisition, breeding, growing, keeping, and sale. The cost of such license shall be forty dollars for the first year and twenty dollars for each yearly renewal thereafter. All such licenses shall expire on December 31st annually and application for renewal

shall be made prior thereto. [1970 ex.s. c 29 § 14; 1955 c 36 § 77.28.020. Prior: 1947 c 275 § 82; Rem. Supp. 1947 § 5992-91.]

77.28.030 Application—Content. A verified application for such license made in triplicate shall be filed by the applicant with the director which application shall contain the following: A description of the lands and waters which applicant desires to use under the required license; the particular right, title or interest of the applicant in said lands and waters and the total acreage thereof; the extent of improvement upon such lands and waters; a map or diagram of such lands and waters showing where the improvements are located thereon; a statement indicating the species of wild animals, wild birds, or game fish which the applicant desires to acquire, breed, grow, keep, and sell; and such further information as may be required by rule and regulation of the commission. [1955 c 36 § 77.28.030. Prior: 1947 c 275 § 83; Rem. Supp. 1947 § 5992-92.]

77.28.040 Corporate application. If the applicant is a corporation, the application shall be made in the name of the corporation by the president or authorized officer thereof and shall set forth the names and addresses of all the officers and directors of the corporation and the number of shares of stock owned by such officers and directors. If the applicant is a partnership or unincorporated association, the application shall be made by an authorized partner, member or managing officer and shall set forth the names and addresses of all members of the partnership or association together with their respective financial interests and other rights of ownership and control therein. [1955 c 36 § 77.28.040. Prior: 1947 c 275 § 84; Rem. Supp. 1947 § 5992-93.]

77.28.050 Issuance of license. If after investigation by the director it appears that the applicant is the owner or tenant of or has a possessory interest in the lands, waters, and riparian rights shown in the application and that the applicant intends in good faith to establish, operate and maintain a farm for the raising of wild animals, wild birds, or game fish in accordance with law and the rules and regulations of the commission, the director may issue a license to the applicant describing therein the lands and waters and certifying that the licensee is lawfully entitled to use the same for acquiring, breeding, growing, keeping, and selling the kinds of wild animals, wild birds, or game fish specified in such license. [1955 c 36 § 77.28.050. Prior: 1947 c 275 § 85; Rem. Supp. 1947 § 5992-94.]

77.28.060 Rights acquired under license. After such game farmer's license has been granted, the licensee shall be lawfully entitled to acquire, breed, grow, keep, and sell all or any of the wild animals, wild birds, or game fish specified in the license in accordance with law and with the rules and regulations of the commission. [1955 c 36 § 77.28.060. Prior: 1947 c 275 § 86; Rem. Supp. 1947 § 5992-95.]

77.28.070 Game farmer may deal in game bird and game fish eggs. A licensed game farmer may purchase, sell, give away, or dispose of the eggs of any game bird or game fish lawfully in his possession in such manner as may be provided by rule and regulation of the commission. [1955 c 36 § 77.28.070. Prior: 1947 c 275 § 87; Rem. Supp. 1947 § 5992-96.]

77.28.080 Tagging of product. All wild animals, wild birds or game fish given away, sold, or in any manner transferred to any person by any licensed game farmer shall, upon delivery thereof, have attached to each such animal, bird or fish, such tag or seal as may be prescribed by the commission.

It shall be unlawful for any person other than a licensed game farmer to keep or possess any such wild animal, wild bird, or game fish without such tag or seal attached thereto: *Provided*, That any wild animal, wild bird or game fish may be served for food without such tag or seal then being thereon. [1955 c 36 § 77.28.080. Prior: 1947 c 275 § 88; Rem. Supp. 1947 § 5992-97.]

77.28.090 Rights of common carriers. A common carrier may at any time transport any wild animal, wild bird or game fish or part thereof shipped by the holder of a game farmer's license if such wild animal, wild bird, game fish, or such part thereof is tagged or sealed as aforesaid. Every package containing the tagged or sealed carcass of any wild animal, wild bird, or game fish, or any tagged or sealed part thereof, shall have affixed thereto an additional tag or label upon which shall be plainly written or printed the name of the licensee and the name of the consignee. [1955 c 36 § 77.28.090. Prior: 1947 c 275 § 89; Rem. Supp. 1947 § 5992-98.]

77.28.100 Quarterly reports. Every holder of a game farmer's license shall make quarterly reports on the first day of January, April, July and October to the director on blanks to be furnished by the director. Such reports shall give a correct statement of the total number of wild animals, wild birds or game fish owned, killed, transported or sold during the quarter; the names of the persons to whom they were transported or sold; the names of the persons by whom they were tagged or sealed; the increase of all classes of wild animals, wild birds, or game fish held by the licensee; and such other data as may be required by rule and regulation of the commission. Each such report shall be verified by the affidavit of the licensee. [1955 c 36 § 77.28.100. Prior: 1947 c 275 § 90; Rem. Supp. 1947 § 5992-99.]

77.28.110 Access to game farmers' premises. The director or any other officer authorized by him may at all reasonable times with or without warrant, enter and search the premises of any licensed game farmer and inspect his records for the purposes of investigating and determining the number, kind and condition of wild animals, wild birds and game fish possessed by the licensee, or for purposes of enforcing the provisions of this chapter and the rules and regulations of the commission. [1955 c 36 § 77.28.110. Prior: 1947 c 275 § 91; Rem. Supp. 1947 § 5992-100.]

77.28.120 Revocation of license—Notice—Hearing. Whenever there shall be filed with the director a verified complaint charging that the holder of any game farmer's license has been guilty of any act or omission in violation of law pertaining to wild animal, wild bird or game fish or any rule or regulation of the commission, the director shall immediately note such complaint for hearing before the commission at its next regular meeting. The director shall notify the licensee of any such hearing at least ten days in advance thereof by mailing to him at the address shown on his application for game farmer's license a copy of the aforesaid complaint and a notice of the time and place of holding such hearing.

All such hearings shall be summary before the commission and the licensee shall be given an opportunity to be heard. The commission shall have the power to administer oaths, issue subpoenas for the attendance of witnesses, and the production of books, accounts, documents, and papers, and examine witnesses. At the conclusion of any such hearing, the commission may revoke or cancel the game farmer's license. Any such decision by the commission may be appealed to the superior court of the county in which the game farm is located, within thirty days from receipt of written notice of such revocation or cancellation. Unless the appeal be filed within the time aforesaid, the decision of the commission shall be final. In the event of any such revocation or cancellation of any such license, or upon termination of any proceedings for review, the director shall immediately mail notice of such revocation or cancellation to the licensee. After the expiration of ten days following the mailing of the notice by such director, it shall be unlawful for any such licensee whose license is so revoked or canceled to acquire any wild animal, wild bird, or game fish in the manner provided by law or by rule or regulation of the commission for acquisition of such animals, birds, or fish by game farmers. After the expiration of sixty days following the mailing of such notice by the director, it shall be unlawful for any licensee whose license is so revoked or canceled to hold, keep, breed, grow, possess, or sell any wild animal, wild bird, or game fish in the manner provided by law or by rule and regulation of the commission for holding, keeping, breeding, growing, possessing, or selling such animals, birds, or fish by game farmers. [1955 c 36 § 77.28.120. Prior: 1947 c 275 § 92; Rem. Supp. 1947 § 5992-101.]

Chapter 77.32 LICENSES

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77.32.005 Definitions. For the purposes of this chapter:

A "resident" means any citizen of the United States or person who has in good faith declared his intention of becoming a citizen of the United States, and who for at least ninety days immediately preceding any application for a license has maintained a permanent place of abode within this state and has established by formal evidence his intent to continue his residence within this state.

An "alien" means any person who is not a citizen of the United States and has not in good faith declared his intention of becoming a citizen of the United States.

A "nonresident" means any person who is neither a "resident" nor an "alien" as defined in this section. [1961 c 94 § 1; 1957 c 176 § 14.]

77.32.010 General rules as to issuance. It shall be unlawful for any person to hunt, trap, or fish for game animals, fur-bearing animals, game birds or game fish during the season when it is lawful to hunt, trap, or fish for them or to practice taxidermy for profit, or to receive or purchase or resell raw furs for profit, without first having procured and having in force, and in his personal possession, and on his person while so hunting, trapping, fishing, or practicing taxidermy, or dealing in furs, a license so to do issued to him as provided in this chapter: *Provided*, That nothing in this section shall prevent a person under the age of sixteen years, from fishing at any time when it is otherwise lawful to fish: *Provided further*, That any person over the age of seventy years who has been a resident of Washington for ten years or more shall be issued, upon making an affidavit to such effect, a license to fish at any time when it is otherwise lawful to fish. The state game commission in its discretion may authorize license dealers to issue such licenses and make a charge therefor which shall not exceed twenty-five cents: *Provided, further*, That a license shall not be required of a person who

hunts predatory animals or birds without claiming or intending to claim a bounty.

All licenses under this chapter shall be issued by or under the authority of the director, who may deputize game protectors, any county auditor, or any reputable citizen, to issue such licenses and collect the fees therefor.

All persons so deputized by the director shall, on demand, on or before the thirty-first day of December of each year, pay to the director all fees collected and make and furnish all reports required by the director. The commission may make all necessary rules and regulations regarding the issuance of licenses, the collection and payment of fees collected, and the making and furnishing of reports in connection therewith. [1959 c 245 § 1; 1955 c 36 § 77.32.010. Prior: 1947 c 275 § 93; Rem. Supp. 1947 § 5992-102.]

77.32.015 Firearm training program—Certificate—Juvenile requirements. The commission may, as a condition precedent to the granting of a hunting license, require that all persons seventeen years of age or younger present a certificate stating that the holder has completed a course of instruction of at least four hours in the safe handling of firearms.

The commission is authorized to establish a program for training persons in the safe handling of firearms, and for this purpose may cooperate with the National Rifle Association, organized sportsmen's groups, or any public or private association or organization having as one of its objectives the promotion of safety in firearms handling.

The commission shall prescribe the type of instruction, the qualifications of the instructors, and has the right to except certain areas from the requirements of such instruction when facilities for giving instruction are not available.

Each trainee, upon successful completion of the course shall be furnished a firearms safety certificate which shall be signed by an authorized instructor and which certificate shall be considered as compliance with this section for the purpose of obtaining a hunting license. [1957 c 17 § 1.]

77.32.020 Supplemental seals—Tags—Permits—Deer, elk, mountain goat, mountain sheep, wild turkey, bear—Birds—Bow and arrow—Muzzle-loading rifles—Penalties. It shall be unlawful for any person to hunt or kill deer without first having procured from the director a tag to be known as a supplemental deer seal, which tag shall be procured, in addition to any other license, to hunt game animals required by law. The fee for issuing and procuring such tag shall be three dollars and shall be paid in addition to all other license fees prescribed by law. It shall be unlawful for any person to hunt or kill elk without first having procured from the director a tag to be known as a supplemental elk seal, which tag shall be procured in addition to any other license to hunt game animals required by law. The fee for issuing and procuring such tag shall be ten dollars and shall be paid in addition to all other license fees prescribed by law.

It shall be unlawful for any person to hunt or kill mountain goat without first having procured from the director a tag to be known as a supplemental goat seal, which tag shall be procured in addition to any other license to hunt game animals required by law. The fee for issuing and procuring such tag shall be ten dollars and shall be paid in addition to all other license fees prescribed by law.

It shall be unlawful for any person to hunt or kill mountain sheep without first having procured from the director a tag to be known as a supplemental mountain sheep seal, which tag shall be procured in addition to any other license to hunt game animals required by law. The fee for issuing and procuring such tag shall be ten dollars and shall be paid in addition to all other license fees prescribed by law.

It shall be unlawful for any person to hunt or kill wild turkey without first having procured from the director a tag to be known as a supplemental wild turkey seal, which tag shall be procured in addition to any other license to hunt game birds required by law. The fee for issuing and procuring such tag shall be two dollars and shall be paid in addition to all other license fees prescribed by law.

It shall be unlawful for any person to hunt or kill bear in any place where bear is classified as a game animal without first having procured from the director a tag to be known as a supplemental bear seal, which tag shall be procured in addition to any other license to hunt game animals required by law. The fee for issuing and procuring such tag shall be two dollars and shall be paid in addition to all other license fees prescribed by law: *Provided*, That the director may issue permits for the control of bears in areas where, in his opinion, property is being damaged. No tag will be required for any bear killed to control damage.

It shall be unlawful for any nonresident or alien to hunt or kill elk without first having procured from the director a tag to be known as a supplemental nonresident elk seal which tag shall be procured in addition to any other license to hunt game animals required by law. The fee for issuing and procuring such tag shall be thirty-five dollars and shall be paid in addition to all other license fees provided by law.

It shall be unlawful for any nonresident or alien to hunt or kill mountain goat without first having procured from the director a tag to be known as a supplemental nonresident goat seal which tag shall be procured in addition to any other license to hunt game animals required by law. The fee for issuing and procuring such tag shall be thirty-five dollars and shall be paid in addition to all other license fees prescribed by law.

It shall be unlawful for any nonresident or alien to hunt or kill mountain sheep without first having procured from the director a tag to be known as a supplemental mountain sheep seal, which tag shall be procured in addition to any other license to hunt game animals required by law. The fee for issuing and procuring such tag shall be thirty-five dollars and shall be paid in addition to all other license fees prescribed by law.

It shall be unlawful for any person to hunt or kill any pheasant, quail, or partridge without first having procured from the director an upland bird permit, which permit shall be procured in addition to any other license to hunt game animals required by law. The fee for issuing and procuring such permit shall be two dollars.

It shall be unlawful for any person to hunt or kill wild animals or birds with a bow and arrow or muzzle-loading rifle during any special seasons established exclusively for bow and arrow or muzzle-loading rifle without first procuring from the director a permit to be known as an archery and/or muzzle-loading rifle permit, which permit shall be procured in addition to any other license to hunt game animals or birds required by law. The fee for issuing and procuring such permit shall be five dollars.

Such tags or permits shall be in the possession of all persons while engaged in hunting deer, elk, mountain goat, mountain sheep, wild turkey, bear, pheasant, quail, or partridge; or any game animals during special bow and arrow or muzzle-loading rifle seasons. Such tags or permits shall be prepared by and under the supervision of the director and shall bear the name "department of game of the state of Washington" and the year for which it is issued, and any other distinguishing marks deemed necessary by the director, and shall be void on the first day of April next following the date of issuance. Any person who kills any deer, elk, mountain goat, mountain sheep, wild turkey, or bear shall immediately attach his own tag to the carcass of any such animal or bird and properly seal the same. All moneys received from the issuance or sale of tags or permits as provided herein shall be paid into the state game fund. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars and not more than two hundred fifty dollars or by imprisonment in the county jail for not less than ten days and not more than thirty days or by both such fine and imprisonment. [1970 ex.s. c 29 § 1; 1967 c 10 § 1; 1957 c 176 § 1; 1955 c 36 § 77.32.020. Prior: 1953 c 75 § 1; 1947 c 275 § 94; 1945 c 81 § 7; 1937 c 63 § 2; 1935 c 59 § 4; Rem. Supp. 1947 § 5992-103.]

Effective date—1970 ex.s. c 29: "The effective date of this 1970 amendatory act shall be January 1, 1971." [1970 ex.s. c 29 § 16.] This applies to the 1970 amendments to RCW 77.28.020, 77.32.020, 77.32.060, 77.32.100-77.32.113, 77.32.130-77.32.160, 77.32.190, 77.32.200, 77.32.225 and to RCW 77.32.255.

77.32.031 Supplemental steelhead seal—Fee, exempt persons, disposition of moneys from—Penalty. It shall be unlawful for any person to fish for or take steelhead without first having procured from the director a seal to be known as a supplemental steelhead seal, which shall be procured, in addition to any other license, to fish for steelhead required by law. This seal shall be in the possession of all persons while engaged in fishing for steelhead.

The seal shall be prepared by and under the supervision of the director, and it shall bear the name "Department of Game of the State of Washington", the

time period for which it is issued, and any other distinguishing marks deemed necessary by the director. The procuring fee shall be two dollars and shall be in addition to other license fees prescribed by law: *Provided*, That this fee shall not apply to juveniles and free license holders. All moneys received from the issuance or sale of the seal provided herein shall be paid into the state game fund.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not less than twenty-five dollars nor more than two hundred fifty dollars or by imprisonment in the county jail for not less than ten days nor more than thirty days or by both such fine and imprisonment. [1969 ex.s. c 17 § 1.]

77.32.050 Issuer's compensation—State licenses. Any person deputized by the director to issue combination state hunting and fishing licenses and trapping, taxidermy, or fur dealer licenses, as authorized by this chapter, shall charge the sum of twenty-five cents in addition to collecting the fees prescribed by law for issuing each such license, which sum shall be retained by him for his services. [1955 c 36 § 77.32.050. Prior: 1953 c 75 § 2; 1947 c 275 § 97; Rem. Supp. 1947 § 5992-106.]

77.32.060 Issuer's compensation—Licenses, state, county—Special permits and tags. Any person deputized by the director to issue combination county hunting and fishing licenses, state resident fishing licenses, state resident hunting licenses, nonresident state fishing licenses, nonresident state hunting licenses, and nonresident state transient licenses, and special permits and tags shall charge the sum of twenty-five cents in addition to collecting the fee prescribed by law, for issuing each such license, and ten cents for issuing each tag or permit, which sum shall be retained by him for his services. [1970 ex.s. c 29 § 2; 1957 c 176 § 2; 1955 c 36 § 77.32.060. Prior: 1953 c 75 § 3; 1947 c 275 § 98; Rem. Supp. 1947 § 5992-107.]

Effective date—1957 c 176: "Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 12 and 13 above shall become effective on January 1, 1958." [1957 c 176 § 15.] This applies to RCW 77.32.060, 77.32.100, 77.32.103, 77.32.105, 77.32.110, 77.32.113, 77.32.130, 77.32.150, 77.32.160, 77.32.225 and the repeal of RCW 77.32.140.

77.32.070 Information required in application. Every application for a license shall be in writing on a blank form to be furnished for that purpose and signed by the applicant and shall contain information concerning sex, citizenship, age, place of residence, and any other matters required by rule and regulation of the commission. [1955 c 36 § 77.32.070. Prior: 1947 c 275 § 99; Rem. Supp. 1947 § 5992-108.]

77.32.080 Records and reports. The commission may adopt rules and regulations requiring records to be kept and reports to be made by licensees concerning the time, manner, and place of taking any wild animals, wild birds, or game fish, the quantities taken, and such other information as may be helpful in enforcing the provisions of this title or the rules and regulations of the commission. Such rules and regulations may prescribe

the form of such records and reports and may require licensees to keep such records current while hunting, fishing, or trapping, and to display the same, and may authorize the director to prepare and distribute such record and report forms to licensees. [1955 c 36 § 77.32.080. Prior: 1947 c 275 § 100; Rem. Supp. 1947 § 5992-109.]

77.32.090 Form of licenses. Licenses issued under this title shall be in such form, of such materials, and of such colors as may be designated by the commission, and the commission may adopt rules and regulations pertaining to the form, material, color, use, possession, and display of such licenses. [1955 c 36 § 77.32.090. Prior: 1947 c 275 § 101; Rem. Supp. 1947 § 5992-110.]

77.32.100 Resident state hunting and fishing license. Any resident may by paying the sum of twelve dollars obtain a state hunting and fishing license, which shall entitle the holder thereof to hunt and fish in any county of the state until the first day of January next following the date of its issuance, when it is lawful to hunt or fish therein. [1970 ex.s. c 29 § 3; 1965 c 48 § 1; 1957 c 176 § 3; 1955 c 36 § 77.32.100. Prior: 1953 c 75 § 4; 1947 c 128 § 2; Rem. Supp. 1947 § 5897-2.]

77.32.103 Resident state hunting license. Any resident may by paying the sum of six dollars and fifty cents obtain a state hunting license which shall entitle the holder thereof to hunt in any county of the state until the first day of January next following the date of its issuance, when it is lawful to hunt therein. [1970 ex.s. c 29 § 4; 1965 c 48 § 2; 1957 c 176 § 4; 1955 c 36 § 77.32.103. Prior: 1953 c 75 § 5.]

77.32.105 Resident state fishing license. Any resident may by paying the sum of seven dollars and fifty cents obtain a state fishing license which shall entitle the holder thereof to fish in any county of the state until the first day of January next following the date of its issuance, when it is lawful to fish therein. [1970 ex.s. c 29 § 5; 1965 c 48 § 3; 1957 c 176 § 5; 1955 c 36 § 77.32.105. Prior: 1953 c 75 § 6.]

77.32.110 Resident county hunting and fishing license. Any resident may by paying the sum of eight dollars obtain a hunting and fishing license, which shall entitle the holder thereof to hunt and fish within the county in which he resides and for which the license is issued until the first day of January next following the date of issuance, when it is lawful to hunt or fish therein. [1970 ex.s. c 29 § 6; 1965 c 48 § 4; 1957 c 176 § 6; 1955 c 36 § 77.32.110. Prior: 1953 c 75 § 7; 1947 c 128 § 1; Rem. Supp. 1947 § 5897-1.]

77.32.113 Resident county fishing license. Any resident may by paying the sum of six dollars obtain a fishing license which shall entitle the holder thereof to fish within the county in which he resides and for which the license is issued until the first day of January next following the date of issuance, when it is lawful to fish

therein. [1970 ex.s. c 29 § 7; 1965 c 48 § 5; 1957 c 176 § 7; 1955 c 36 § 77.32.113. Prior: 1953 c 75 § 8.]

77.32.120 Allocation of receipts from resident licenses. Twenty percent of all moneys received from the sale of resident state and county hunting and fishing licenses may be used to acquire lands for public hunting and fishing areas, small game habitat areas and rights of way thereto and for the development and maintenance of such areas for recreational and game purposes. [1955 c 36 § 77.32.120. Prior: 1953 c 66 § 1; 1947 c 128 § 3; Rem. Supp. 1947 § 5897-3.]

77.32.130 Nonresident state hunting license. Any nonresident or alien may by paying the sum of fifty dollars obtain a hunting license which shall entitle the holder thereof to hunt in any county of the state until the first day of January next following the date of issuance, when it is lawful to hunt therein. [1970 ex.s. c 29 § 8; 1957 c 176 § 8; 1955 c 36 § 77.32.130. Prior: 1953 c 75 § 9; 1947 c 275 § 102; 1931 c 108 § 5; 1927 c 258 § 8; 1925 ex.s. c 178 § 44; Rem. Supp. 1947 § 5992-111.]

77.32.150 Nonresident state fishing license. Any nonresident or alien may by paying the sum of twenty dollars obtain a state fishing license, which shall entitle the holder thereof to fish in any county of the state until the first day of January next following the date of issuance, when it is lawful to fish therein. [1970 ex.s. c 29 § 9; 1957 c 176 § 9; 1955 c 36 § 77.32.150. Prior: 1953 c 75 § 11; 1949 c 205 § 4; 1947 c 275 § 104; 1931 c 108 § 5; 1927 c 258 § 8; 1925 ex.s. c 178 § 44; Rem. Supp. 1949 § 5992-113.]

77.32.160 Transient's limited state fishing license. Any nonresident or alien who is temporarily sojourning in the state may by paying the sum of six dollars obtain a state fishing license, which shall entitle the holder thereof to fish in any county of the state for a period of seven days following the date of its issuance, when it is lawful to fish therein: *Provided*, That the license under this section shall not entitle the holder thereof to fish for steelhead during the winter steelhead seasons as established by rule or regulation of the commission. [1970 ex.s. c 29 § 10; 1957 c 176 § 10; 1955 c 36 § 77.32.160. Prior: 1953 c 75 § 12; 1947 c 275 § 105; 1931 c 108 § 6; 1925 ex.s. c 178 § 45; Rem. Supp. 1947 § 5992-114.]

77.32.185 Fresh water sport fishing licenses—Use of funds. All funds accruing to the state of Washington from the sale of fresh water sport fishing licenses shall be used exclusively to defray the expenses of the administration and operations of the state department of game and shall not be diverted to any other purpose. [1955 c 36 § 77.32.185. Prior: 1951 c 124 § 2.]

77.32.190 Trapper's license. Any resident may by paying the sum of ten dollars obtain a state trapping license which shall entitle the holder thereof to trap furbearing animals for their hides or their pelts only, within any county of the state until the first day of April next following the date of its issuance, at any time

when it is lawful to trap such animals. [1970 ex.s. c 29 § 11; 1963 c 177 § 7; 1957 c 176 § 11; 1955 c 36 § 77.32-190. Prior: 1947 c 275 § 108; 1929 c 221 § 4; 1925 ex.s. c 178 § 51; Rem. Supp. 1947 § 5992-117.]

77.32.200 Taxidermist's license. Any person may by paying the sum of ten dollars obtain a license, which shall entitle him to practice taxidermy for profit in any county of the state until the first day of January next following the date of its issuance. [1970 ex.s. c 29 § 12; 1955 c 36 § 77.32.200. Prior: 1947 c 275 § 109; Rem. Supp. 1947 § 5992-118.]

77.32.210 Fur dealer's license. Any person may, by paying the sum of ten dollars, obtain a license, which shall entitle the holder thereof to purchase, receive, or resell raw furs for profit in any county of the state until the first day of January next following the date of its issuance. [1955 c 36 § 77.32.210. Prior: 1947 c 275 § 110; Rem. Supp. 1947 § 5992-119.]

77.32.220 Records and reports of taxidermists and fur dealers. All licensed taxidermists and fur dealers shall permit inspection of their records by the director or his duly authorized representatives at reasonable times concerning all dealings regarding wild animals, wild birds, or game fish and shall make such reports containing such information as may be required by rule and regulation of the commission. [1955 c 36 § 77.32-220. Prior: 1947 c 275 § 111; Rem. Supp. 1947 § 5992-120.]

77.32.225 Fishing guide license—Rules, records, reports. A fishing guide license shall be obtained by every person who offers services or who performs the services of a professional guide for others in the taking of game fish.

The fee for such license is seventy-five dollars for a resident and one hundred fifty dollars for a nonresident or alien which shall entitle the holder thereof to act as a fishing guide in any county of the state until the first day of January next following the date of its issuance.

The commission may adopt rules and regulations requiring records to be kept and reports to be made by fishing guides concerning the activities of their clients with respect to the time, manner, and place of taking any game fish by such clients, the quantities taken by them, and such other information as may be helpful in enforcing the provisions of the game code or the rules and regulations of the commission. Such rules and regulations may prescribe the form of such records and reports and may require fishing guides to keep such records current while performing their services, and to display the same, and may authorize the director to prepare and distribute to fishing guides the forms for such records and reports. [1970 ex.s. c 29 § 13; 1957 c 176 § 13.]

77.32.230 Free licenses—Certain veterans—Blind persons. Any bona fide resident of this state who is a veteran of the Spanish-American War, or any person sixty-five or more years of age who is an honorably

discharged veteran of the United States military or naval forces having a service-connected disability and who has been a resident of this state for five years, upon the making of an affidavit to such effect, shall be given a state hunting and fishing license free of charge upon application therefor: *Provided*, That the applicant pays the statutory agent's fee for such license.

Any person who is blind shall be issued a fishing license free of charge except for the statutory agent's fee. Such license shall be renewable annually under the same conditions. Any separate tags or punch cards which may be required by law shall not be deemed to be included with the free fishing license and must be purchased separately by any person receiving a license pursuant to this section. [1973 1st ex.s. c 58 § 1; 1961 c 94 § 2; 1959 c 245 § 2; 1955 c 36 § 77.32.230. Prior: 1947 c 275 § 112; Rem. Supp. 1947 § 5992-121.]

77.32.240 Permits for scientific purposes. The director may issue permits limited as to number and duration for the collection of wild birds, their nests, and eggs, game animals, fur-bearing animals, or game fish for scientific purposes only, within certain game areas or throughout the state. Before any such permit is issued, the applicant therefor shall file an application in writing stating his name, age, and place of residence. The application shall be accompanied by a certificate signed by the president or the curator of the museum of either the University of Washington or the Washington State University certifying that the applicant is a person of good moral character and is possessed of sufficient scientific knowledge to warrant the issuance of the permit. The applicant shall file a bond running to the state with good and sufficient surety, to be approved by the director, in the penal sum of one thousand dollars, and conditioned for the faithful compliance with all the provisions of the permit and of this section. The director may issue permits without bond to any accredited representative of any museum or institute of natural history of the United States or any state or county presenting credentials under the seal of such museum or institute. Permits shall be valid for the time limited therein, unless sooner revoked, but in no instance for a period of more than one year from the first day of March of the year in which they are issued.

It shall be unlawful for any person having a permit issued under this section to sell or offer for sale any specimens collected, but the holder of any such permit may exchange such specimens with any state university or any museum or institute of natural history of the United States, or any state, or any country, or with any individual holding a similar permit from this state or another state.

Every holder of such permit who violates any of the provisions of this section shall forfeit his permit and the penalty of the bond required for the issuance thereof and he shall be prohibited from being issued a similar permit for a period of one year. [1955 c 36 § 77.32.240. Prior: 1947 c 275 § 113; Rem. Supp. 1947 § 5992-122.]

77.32.245 Killer whale permit. It shall be unlawful for any person to attempt to capture or to capture killer whales, *Orcinus orca*, without first having procured from the commission a permit to be known as a killer whale permit. The fee for retaining a killer whale shall be one thousand dollars for each such whale: *Provided*, That the commission may waive the permit for any organization capturing a killer whale for scientific purposes and not for profit. Said fees shall be credited to the general fund. [1971 ex.s. c 166 § 7.]

77.32.250 Licenses nontransferable. Licenses issued under this title shall not be transferable. Any person hunting, trapping, or fishing, shall, upon the demand of the director, any game protector, deputy game protector, ex officio game protector, sheriff, constable, or police officer, exhibit his license to such officer, and write his name for the purpose of comparison with the signature on the license, and his failure or refusal to exhibit his license and write his name upon demand shall be prima facie evidence that such person has no license or is not the person named in the license in his possession. [1955 c 36 § 77.32.250. Prior: 1947 c 275 § 114; Rem. Supp. 1947 § 5992-123.]

77.32.255 Duplicate licenses and permits. In the case of loss, mutilation or destruction of a license certificate or permit certificate issued under the provisions of Title 77 RCW, the director shall issue a duplicate thereof upon proof of the facts and payment of a fee of one dollar. [1970 ex.s. c 29 § 15.]

Effective date—1970 ex.s. c 29: The effective date of this section is January 1, 1971, see note following RCW 77.32.020.

77.32.260 Forfeiture of license by judicial decree. Upon conviction of any person of a violation of any provision of this title, or rule or regulation of the commission, the judge or justice of the peace may, in addition to the penalty imposed by law, forfeit the license of such person. Upon subsequent conviction of any such person of any violation of any provision of this title or rule or regulation of the commission, the forfeiture of such license shall be mandatory. The commission may by rule and regulation prohibit the issuance of a license to any person convicted two or more times of any such violation or prescribe the conditions under which such license may be issued. [1955 c 36 § 77.32.260. Prior: 1947 c 275 § 115; Rem. Supp. 1947 § 5992-124.]

77.32.270 Suspension of sentence. Any judge or justice of the peace may suspend the whole or any part of any fine or sentence imposed by him upon any person found guilty of violating any of the provisions of this title or any rule or regulation of the state game commission. [1955 c 36 § 77.32.270. Prior: 1947 c 275 § 116; Rem. Supp. 1947 § 5992-125.]

77.32.280 Revocation for shooting person or livestock. The director shall revoke the hunting license of any person who shoots any other person or any domestic livestock while hunting. No hunting license shall

thereafter be reissued to such person unless the commission, after a hearing held at one of its regular meetings, authorizes the issuance of such license, and providing the licensee shall have paid for all liquidated damages caused by the wrongful shooting. Any person may appeal to the superior court of the county of his residence from any decision of the commission, providing notice of such appeal is served on the commission and filed in said court within thirty days following the refusal of the commission to issue such license. [1955 c 36 § 77.32.280. Prior: 1949 c 44 § 1; Rem. Supp. 1949 § 5992-124a.]

Chapter 77.40 SHOOTING GROUNDS

Sections

77.40.010	Public shooting grounds—Skagit county.
77.40.030	Deed of tidelands—Mason county.
77.40.040	Governor to execute deed.
77.40.050	Use as public shooting grounds.
77.40.060	Rules and regulations.
77.40.070	Public shooting grounds—Skagit and Snohomish counties.
77.40.080	Grounds withdrawn from sale or lease.
77.40.090	Certain tidelands in Skagit, Snohomish, and Island counties.

77.40.010 Public shooting grounds—Skagit county. The following described tidelands situated in Skagit county, to wit: All tidelands of the second class, including detached tidelands, owned by the state situated in front of, adjacent to or abutting upon section 7, township 33 north, range 3 east, Willamette Meridian, lying south of the north line of said section 7, produced west, north of the south line of said section 7, produced west, and east of a line parallel to and one mile west of the east line of said section 7, are hereby declared to be proper for use as a public shooting grounds. [1955 c 36 § 77.40.010. Prior: 1941 c 165 § 1; Rem. Supp. 1941 § 7993-4.]

77.40.030 Deed of tidelands—Mason county. The commissioner of public lands shall certify, in the manner now provided by law in other cases, to the governor, for deed to the department, all of the following described tidelands, situate in Mason county, to wit: Beginning at a point in front of section 6, township 21 north, range 3 west, W.M., which is S 44° 30' W 920 feet distant from the meander corner on the north line of said section and running thence S 4° 10' E 1073.5 feet, S 13° 10' W 1269.7 feet, S 74° 40' W 670 feet and S 27° 32' W 1125 feet to a point which is N 45° 50' E 1932 feet distant from the southwest corner of said section 6; thence N 9° 30' W 3530 feet and east 1960 feet to said point of beginning, containing an area of 104.68 acres according to the plat thereof on file in the office of the commissioner of public lands subject, however, to a right of way for transmission line over said tract granted to the city of Tacoma. [1955 c 36 § 77.40.030. Prior: 1941 c 190 § 1; Rem. Supp. 1941 § 7993-6.]

77.40.040 Governor to execute deed. The governor shall execute, and the secretary of state shall attest, a deed conveying to the department all of the tidelands described in RCW 77.40.030. [1955 c 36 § 77.40.040. Prior: 1941 c 190 § 2; Rem. Supp. 1941 § 7993-7.]

77.40.050 Use as public shooting grounds. All of the tidelands described in RCW 77.40.030 are granted to the department to be used as a public shooting grounds and for no other purposes; and in case the department attempts to use or permits the use of such lands, or any portion thereof, for any other purpose, or in the event that the lands are no longer used as a public shooting grounds, they shall forthwith revert to the state and the department shall certify such reversion to the commissioner of public lands. [1955 c 36 § 77.40.050. Prior: 1941 c 190 § 3; Rem. Supp. 1941 § 7993-8.]

77.40.060 Rules and regulations. The department may make rules and regulations in relation to the use of such tidelands for the purposes specified. [1955 c 36 § 77.40.060. Prior: 1941 c 190 § 4; Rem. Supp. 1941 § 7993-9.]

77.40.070 Public shooting grounds—Skagit and Snohomish counties. The following described tidelands situated in Skagit and Snohomish counties, to wit:

All tidelands of the second class, owned by the state, situate in front of, adjacent to, or abutting upon the following described uplands:

Lots 3, 4, 5, 6, 7, 8, 9, and 10, section 25, township 33 north, range 3 east, W.M., with a frontage of 280.40 lineal chains, more or less; also

Lots 10 and 11 and the west side of lots 9 and 12, section 30, township 33 north, range 4 east, W.M., with a frontage of 125.56 lineal chains, more or less; also

Lot 3 and the west side of lots 2 and 4, section 31, township 33 north, range 4 east, W.M., with a frontage of 54.80 lineal chains, more or less; also

All detached tidelands of the second class, owned by the state, lying within or in front of sections 20, 21, 22, 25, 26, 27, 35, and 36, township 33 north, range 3 east, W.M., lots 10 and 11 and the west side of lots 9 and 12, section 30 and section 31, township 33 north, range 4 east, W.M., and section 1, township 32 north, range 3 east, W.M., lying northeasterly of a line running southeasterly from a point one mile west of the northeast corner of said section 20 to a point one mile west of the quarter section corner on the south line of said section 1, are hereby declared to be suitable and proper for use as a public shooting grounds. [1955 c 36 § 77.40.070. Prior: 1945 c 179 § 1; Rem. Supp. 1945 § 7993-5a.]

77.40.080 Grounds withdrawn from sale or lease. Upon the filing with the commissioner of public lands of a certificate showing that such lands are about to be used for a public shooting grounds by the department, the lands shall be withdrawn from sale or lease and may be thereafter used as a public shooting grounds under the control of the department: *Provided*, That they may be used by the commissioner of public lands for booming purposes. Should the department no longer

desire to use such lands for such purposes it shall certify such fact to the commissioner of public lands, and the lands shall thereafter be under the supervision, care, and control of the commissioner of public lands and subject to sale or lease as provided by law. [1955 c 36 § 77.40.080. Prior: 1945 c 179 § 2; Rem. Supp. 1945 § 7993-5b.]

77.40.090 Certain tidelands in Skagit, Snohomish, and Island counties. The commissioner of public lands shall withdraw from sale or lease, except lease for the production of oysters or for booming or industrial uses: *Provided*, That the director of game has approved such industrial uses as not being generally incompatible with the primary function of these lands as public shooting grounds, the following described second class tidelands and detached tidelands within the boundaries hereinafter set forth: Those tidelands situate in front of, adjacent to, or abutting upon: government lots 3, 4 and 5, section 28 and government lot 1, section 27 and government lots 1, 2, 3 and 4, section 34, township 35 north, range 2 east, W.M., and government lots 1, 2 and 3, section 3, township 34 north, range 2 east, W.M., excepting therefrom the portion deeded by the state of Washington to the Great Northern Railway Company on December 30, 1941.

The commissioner of public lands shall withdraw from sale or lease, except lease for the production of oysters or for booming purposes, the following described second class tidelands and detached tidelands within the boundaries hereinafter set forth:

Those tidelands other than tidelands described above in this section lying within an area beginning at a point on the meander line at the Skagit-Whatcom line, thence following the meander line in its general southerly direction to the north boundary of the Swinomish Indian Reservation, thence westerly along the north line of said Indian reservation to the base of Marches Point, thence northerly along the meander line to the north meander corner on the west line of section 28, township 35 north, range 2 E., W.M., thence north to the Whatcom county line, thence easterly along said county line to the point of beginning.

Also, all tidelands of the second class, including detached tidelands in Skagit county lying south of the main channel of the Swinomish Slough.

Also, those tidelands in Snohomish and Island counties located in township 32 north, range 3 E., W.M.

Also, those tidelands lying in front of sections 1, 2 and 11 and 12, township 31 north, range 3 E., W.M., in Snohomish county.

All the tidelands described in this section shall be available for use as public shooting grounds under the direction and control of the state game commission. [1961 c 190 § 1; 1955 c 36 § 77.40.090. Prior: 1951 c 77 §§ 1, 2.]

Chapter 77.98 CONSTRUCTION

Sections

77.98.010 Continuation of existing law.

77.98.020 Title, chapter, section headings not part of law.
77.98.030 Invalidity of part of title not to affect remainder.
77.98.040 Repeals and saving.
77.98.050 Emergency—1955 c 36.

77.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1955 c 36 § 77.98.010.]

77.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1955 c 36 § 77.98.020.]

77.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1955 c 36 § 77.98.030.]

77.98.040 Repeals and saving. The following acts or parts of acts

- (1) Chapter 65, Laws of 1953;
- (2) Chapter 66, Laws of 1953;
- (3) Chapter 75, Laws of 1953;
- (4) Chapter 127, Laws of 1953;
- (5) Chapter 77, Laws of 1951;
- (6) Chapter 124, Laws of 1951;
- (7) Chapter 126, Laws of 1951;
- (8) Chapter 262, Laws of 1951;
- (9) Chapter 138, Laws of 1949;
- (10) Chapter 142, Laws of 1949;
- (11) Chapter 205, Laws of 1949;
- (12) Chapter 238, Laws of 1949;
- (13) Chapter 125, Laws of 1947 and Chapter 77.36 RCW;

- (14) Chapter 126, Laws of 1947;
- (15) Chapter 127, Laws of 1947;
- (16) Chapter 128, Laws of 1947;
- (17) Chapter 130, Laws of 1947;
- (18) Chapter 138, Laws of 1947;
- (19) Chapter 275, Laws of 1947;
- (20) Chapter 179, Laws of 1945;
- (21) Chapter 257, Laws of 1943;
- (22) Chapter 165, Laws of 1941;
- (23) Chapter 190, Laws of 1941;
- (24) Chapter 140, Laws of 1939;

are each repealed but such repeal shall not be construed as affecting any existing right acquired under the provisions of the statutes repealed, nor as affecting any proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder. [1955 c 36 § 77.98.040.]

77.98.050 Emergency—1955 c 36. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1955 c 36 § 77.98.050.]

TITLE 78

MINES, MINERALS, AND PETROLEUM

Chapters

- 78.04** Mining corporations.
- 78.06** Mining claims—Survey reports.
- 78.08** Location of mining claims.
- 78.12** Abandoned shafts and excavations.
- 78.16** Mineral and petroleum leases on county lands.
- 78.40** Coal mining code.
- 78.44** Surface mining.
- 78.48** Mine to market roads.
- 78.52** Oil and gas conservation.

Reviser's note: The powers, duties, and functions of the department of conservation in respect to mining as set forth in Title 78 RCW were transferred to the department of natural resources by 1967 c 242 § 14 [RCW 43.27A.120].

Appropriation of water for industrial purposes: RCW 90.16.020.

Assay, altering or making false sample or certificate: RCW 9.45.210, 9.45.220.

Boilers and unfired pressure vessels: Chapter 70.79 RCW.

Bureau of statistics: Chapter 43.07 RCW.

Corporations for profits—Fees—Fee of nonproducing mining corporation: RCW 23A.40.090.

Current state school fund—Federal government proceeds from mineral, forest and public lands: RCW 28A.41.030.

Department of commerce and economic development: Chapter 43.31 RCW.

Department of natural resources: Chapter 43.30 RCW.

Eminent domain by corporations: Chapter 8.20 RCW.

Explosives: Chapter 70.74 RCW.

False advertising: RCW 9.04.010.

False representations: Chapter 9.38 RCW.

Franchise on county roads and bridges: Chapter 36.55 RCW.

Fraud in selling mine or mining claim: RCW 9.45.200.

Geological survey: RCW 43.27A.130, chapter 43.92 RCW.

Geology supervisor: RCW 43.21.040-43.21.050 and 43.27A.130.

Killing person by reckless operation of vessel or boiler: RCW 9.48.120.

Labor liens on franchises, earnings, and property of certain companies: Chapter 60.32 RCW.

Labor regulations: Title 49 RCW.

Measurement of oil, gas, coal products, fraud, penalty: RCW 9.45.122-9.45.126.

Mechanics' and materialmen's liens: Chapter 60.04 RCW.

Mine inspectors, state: RCW 43.22.200, 43.22.210.

Mines, supervisor: RCW 43.21.060-43.21.090, 43.27A.120.

Oil and gas conservation: Chapter 78.52 RCW.

Operating engine or boiler without spark arrester: RCW 9.40.040.

Pipe lines, oil and gas: Chapter 81.88 RCW.

Private ways of necessity: Chapter 8.24 RCW.

Protection of employees: State Constitution Art. 2 § 35.

Public lands

applications for federal certification that lands are nonmineral: RCW 79.01.308.

relinquishment to United States in certain cases of reserved mineral rights: RCW 79.08.110.

sales and leases, reservation in contract: RCW 79.01.224.

Public nuisances enumerated: RCW 7.48.140(9).

Public utilities, gas, electrical and water companies: Chapter 80.28 RCW.

Robbing sluice boxes, mining claims, etc.: RCW 9.75.030.

Safety and extrahazardous employment: Chapter 49.16 RCW.

Sales of petroleum products improperly labeled or by wrong grade: RCW 9.16.080, 9.16.090.

Smoking—Where prohibited: RCW 9.40.030.

Supervisor of industrial safety and health: RCW 43.22.040.

Underground storage of natural gas: Chapter 80.40 RCW.

Use of waters for irrigation, mining, manufacturing, deemed a public use: State Constitution Art. 21.

Using false weights and measures: RCW 9.45.120.

Weights and measures: Chapters 19.92, 19.94 RCW.

Workmen's compensation: Title 51 RCW.

Chapter 78.04 MINING CORPORATIONS

Sections

- 78.04.010 Right of eminent domain.
- 78.04.015 Right of entry.
- 78.04.020 Manner of exercising right of eminent domain.
- 78.04.030 No stock subscription necessary.
- 78.04.040 Right of stockholder to enter and examine property.
- 78.04.050 Penalty for violations under RCW 78.04.040.

Annual license fee of nonproducing mining corporation: RCW 23A.40.090.

Corporations in general: Title 23A RCW.

78.04.010 Right of eminent domain. The right of eminent domain is hereby extended to all corporations incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, and doing business in this state, for the purpose of acquiring, owning or operating mines, mills or reduction works, or mining or milling gold and silver or other minerals, which may desire to erect and operate surface tramways or elevated cable tramways for the purpose of carrying, conveying or transporting the products of such mines, mills or reduction works. [1897 c 60 § 1; RRS § 8608. FORMER PART OF SECTION: 1897 c 60 § 2; RRS § 8609 now codified as RCW 78.04.015.]

Water rights—Appropriation for industrial (mining) purposes: RCW 90.16.020 and 90.16.030.

78.04.015 Right of entry. Every corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, and doing business in this state, for the purpose of acquiring, owning or operating mines, mills or reduction works, or mining or milling gold and silver

or other minerals, which may desire to erect and operate surface tramways or elevated cable tramways for the purpose of carrying, conveying or transporting the products of such mines, mills or reduction works, shall have the right to enter upon any land between the termini of the proposed lines for the purpose of examining, locating and surveying such lines, doing no unnecessary damage thereby. [1897 c 60 § 2; RRS § 8609. Formerly RCW 87.04.010, part.]

78.04.020 Manner of exercising right of eminent domain. Every such corporation shall have the right to appropriate real estate or other property for right of way in the same manner and under the same procedure as now is or may be hereafter provided by the law in the case of other corporations authorized by the laws of this state to exercise the right of eminent domain. [1897 c 60 § 3; RRS § 8610.]

Eminent domain by corporations: Chapter 8.20 RCW.

78.04.030 No stock subscription necessary. In incorporations already formed, or which may hereafter be formed under this chapter, where the amount of the capital stock of such corporation consists of the aggregate valuation of the whole number of feet, shares, or interest in any mining claim in this state, for the working and development of which such corporation shall be or have been formed, no actual subscription to the capital stock of such corporation shall be necessary; but each owner in said mining claim shall be deemed to have subscribed such an amount to the capital stock of such corporation as under its bylaws will represent the value of so much of his interest in said mining claim, the legal title to which he may by deed, deed of trust or other instrument vest, or have vested in such corporation for mining purposes; such subscription to be deemed to have been made on the execution and delivery to such corporation of such deed, deed of trust, or other instrument; nor shall the validity of any assessment levied by the board of trustees of such corporation be affected by the reason of the fact that the full amount of the capital stock of such corporation, as mentioned in its certificate of incorporation, shall not have been subscribed as provided in this section: *Provided*, That the greater portion of said amount of capital stock shall have been so subscribed: *And, provided further*, That this section shall not be so construed as to prohibit the stockholders of any corporation formed, or which may be formed, for mining purposes as provided in this section, from regulating the mode of making subscriptions to its capital stock and calling in the same by bylaws or express contract. [Code 1881 § 2446; 1873 p 407 § 26; 1869 p 339 § 28; 1866 p 65 § 28; RRS § 8611.]

Reviser's note: The two remaining sections of "this chapter" (Code 1881 c CLXXXV) are codified in RCW 78.04.030 above and RCW 90.16.010.

78.04.040 Right of stockholder to enter and examine property. Any owner of stock to the amount of one thousand shares, in any corporation doing business under the laws of the state of Washington for the purposes

of mining, shall, at all hours of business or labor on or about the premises or property of such corporation, have the right to enter upon such property and examine the same, either on the surface or underground. And it is hereby made the duty of any and all officers, managers, agents, superintendents, or persons in charge, to allow any such stockholder to enter upon and examine any of the property of such corporation at any time during the hours of business or labor; and the presentation of certificates of stock in the corporation of the amount of one thousand shares, to the officer or person in charge, shall be prima facie evidence of ownership and right to enter upon or into, and make examinations of the property of the corporation. [1901 c 120 § 1; RRS § 8612.]

78.04.050 Penalty for violations under RCW 78.04.040. Any violation of any of the provisions of RCW 78.04.040 by any officer or agent of such corporation shall constitute a misdemeanor, and upon conviction thereof every such officer or agent shall be fined in a sum not greater than two hundred dollars for each offense. [1901 c 120 § 2; RRS § 8613.]

Chapter 78.06

MINING CLAIMS—SURVEY REPORTS

Sections

- 78.06.010 Definitions.
- 78.06.020 Duplicate survey reports to be filed with county auditor—Contents.
- 78.06.030 Auditor to forward survey reports to division of mines and geology.

Exposing lode by geological, etc., survey equivalent to discovery shaft—Reports: RCW 78.08.072.

78.06.010 Definitions. Words or terms used herein have the following meanings:

- (1) "Geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits.
- (2) "Geochemical surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits.
- (3) "Geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuities in geological formations. [1959 c 119 § 1.]

78.06.020 Duplicate survey reports to be filed with county auditor—Contents. All reports of geological, geophysical, or geochemical surveys on mining claims which may be filed with the auditor of any county in this state pursuant to United States Public Law 85-876 or amendments or revisions thereto shall be so filed in duplicate, and shall set forth fully:

- (1) The location of the survey performed in relation to the point of discovery and boundaries of the claim.

- (2) The nature, extent, and cost of the survey.
 (3) The date the survey was commenced and the date completed.
 (4) The basic findings therefrom.
 (5) The name, address, and professional background of the person or persons performing or conducting the survey. [1959 c 119 § 2.]

78.06.030 Auditor to forward survey reports to division of mines and geology. All county auditors receiving for filing duplicate copies of geological, geochemical, and geophysical survey reports on mining claims shall forward, monthly, one copy of each report received to the division of mines and geology of the department of conservation. [1959 c 119 § 3.]

Chapter 78.08 LOCATION OF MINING CLAIMS

Sections

	1887 ACT
78.08.005	Prior claims, how governed.
78.08.020	Extent of lode claims.
78.08.030	Rights of locators.
78.08.031	Recorder may be elected—Duties—Records.
78.08.032	Recorder may be elected—Term—Oath—Certifying officer—Record transfer upon vacancy.
78.08.040	Recording instruments affecting claim.
	1899 AND LATER ACTS
78.08.050	Location notices—Contents—Recording.
78.08.060	Staking of claim—Requisites—Right of person diligently engaged in search.
78.08.070	Cut, excavation, tunnel or test hole in lieu of discovery shaft.
78.08.072	Holding claim by geological, etc., survey—Report of survey.
78.08.075	"Lode" defined.
78.08.080	Amended certificate of location.
78.08.081	Assessment work, affidavit of work performed.
78.08.082	Affidavit is prima facie evidence.
78.08.090	Relocating abandoned claim.
78.08.100	Location of placer claims.
78.08.110	Affidavit as proof.
78.08.115	Application of RCW 78.08.050–78.08.140.
78.08.120	Mining district rules and regulations.
78.08.140	When road building to apply as assessment work.

1887 ACT

78.08.005 Prior claims, how governed. All mining claims upon veins or lodes of quartz or other rock in place, bearing gold, silver or other valuable mineral deposits heretofore located, shall be governed as to length along the vein or lode by the customs, regulations and laws in force at the date of such location. [1887 c 87 § 1; RRS § 8615.]

For earlier acts on this subject, see: 1867 pp 146–147, 1869 pp 386–388, 1873 pp 444–446, 1875 pp 126–127, 1877 pp 335–336. See also, act of congress, May 10, 1872.

78.08.020 Extent of lode claims. A mining claim located upon any vein or lode of quartz or other rock in place, bearing gold, silver or other valuable mineral deposits, after the approval of *this act by the governor, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in

length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claims located. No claims shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claims be limited by any mining regulation to less than fifty feet of surface on each side of the middle of such vein or lode at the surface, excepting where adverse rights, existing at the date of the approval of this act, shall make such limitation necessary. The end lines of each claim shall be parallel to each other. [1887 c 87 § 2; RRS § 8616.]

***Reviser's note:** "this act" [1887 c 87], is codified in RCW 78.08.005 through 78.08.040; "date of the approval of this act" was February 2, 1888.

78.08.030 Rights of locators. The locators of all mining locations heretofore made or hereafter made under the provisions of RCW 78.08.005 through 78.08.040, on any mineral vein, lode or ledge on the public domain, and their heirs and assigns so long as they comply with the laws of the United States and the state and local laws relating thereto, shall have the exclusive right to the possession and enjoyment of all surface included within the lines of their location, and of all veins, lodes and ledges throughout their entire depth, and the top or apex of which lies within the surface lines of such location, extending downward vertically, although such veins, lodes or ledges may so far depart from the perpendicular in their course downward as to extend outside of the vertical side line of said surface location. [1887 c 87 § 3; RRS § 8617.]

78.08.031 Recorder may be elected—Duties—Records. The miners of each mining district may elect a recorder of the said district. When so elected, such recorder shall provide books of record, in which it shall be his duty to record all notices of locations or transfers, bonds, conveyances or assignments of mining claims within his district when the same shall be presented to him for record. Such records are hereby declared to be public records open to inspection, and shall have the same force and effect so far as notice is concerned, as the records of deeds and mortgages, in this state. [1887 c 87 § 5; RRS § 8619.]

78.08.032 Recorder may be elected—Term—Oath—Certifying officer—Record transfer upon vacancy. When a recorder shall be elected as provided in RCW 78.08.031, he shall hold his office for a term of one year from the date of his election, and until his successor is elected and qualified. He shall, immediately after his election, file with the county auditor, of the county in which his district is situated, an oath to the effect that he will faithfully discharge the duties of his office. He shall be a certifying officer, and certified copies of his records shall have the same force and effect as similar papers certified by other officers of this state. His fees shall be the same as those of the county auditor for similar work, and should the office of recorder in any mining district at any time become vacant, it shall be the duty of the person last holding said office, and of

any person into whose possession the same may come, to forthwith transmit all the records, papers and files of the said office to the auditor of the county in which such district is located, and such auditor shall thereafter keep the same as part of the records and files of his office. [1887 c 87 § 6; RRS § 8620.]

78.08.040 Recording instruments affecting claim. Inasmuch as RCW 78.08.031 and 78.08.032 leaves the election of a recorder for a mining district optional with the miners thereof, all location notices, bonds, assignments and transfers of mining claims shall be recorded in the office of the county auditor of the county where the same is situated within thirty days after the execution thereof; *provided*, that all records of mining claims and of assignments, deeds, bonds and transfers heretofore made by any recorder of any mining district, or by any county auditor, are hereby declared to be valid and to have the same force and effect as records made in pursuance of the provisions of RCW 78.08.005 through 78.08.040. [1887 c 87 § 7; RRS § 8621.]

1899 AND LATER ACTS

78.08.050 Location notices—Contents—Recording. The discoverer of a lode shall within ninety days from the date of discovery, record in the office of the auditor of the county in which such lode is found, a notice containing the name or names of the locators, the date of the location, the number of feet in length claimed on each side of the discovery, the general course of the lode and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. [1899 c 45 § 1; RRS § 8622.]

For earlier acts on this subject, see: 1867 pp 146-147, 1869 pp 386-388, 1873 pp 444-446, 1875 pp 126-127, 1877 pp 335-336, 1887 c 87; see also, act of congress, May 10, 1872.

78.08.060 Staking of claim—Requisites—Right of person diligently engaged in search. (1) Before filing such notice for record, the discoverer shall locate his claim by posting at the discovery at the time of discovery a notice containing the name of the lode, the name of the locator or locators, and the date of discovery, and marking the surface boundaries of the claim by placing substantial posts or stone monuments bearing the name of the lode and date of location; one post or monument must appear at each corner of such claim; such posts or monuments must be not less than three feet high; if posts are used they shall be not less than four inches in diameter and shall be set in the ground in a substantial manner. If any such claim be located on ground that is covered wholly or in part with brush or trees, such brush shall be cut and trees be marked or blazed along the lines of such claim to indicate the location of such lines.

(2) Prior to valid discovery the actual possession and right of possession of one diligently engaged in the search for minerals shall be exclusive as regards prospecting during continuance of such possession and diligent search. As used in this section, "diligently

engaged" shall mean performing not less than one hundred dollars worth of annual assessment work on or for the benefit of the claim in such year or years it is required under federal law, or any larger amount that may be designated now or later by the federal government for annual assessment work. [1965 c 151 § 1; 1963 c 64 § 1; 1949 c 12 § 1; 1899 c 45 § 2; RRS § 8623.]

78.08.070 Cut, excavation, tunnel or test hole in lieu of discovery shaft. Any open cut, excavation or tunnel which cuts or exposes a lode and from which a total of two hundred cubic feet of material has been removed or in lieu thereof a test hole drilled on the lode to a minimum depth of twenty feet from the collar, shall hold the lode the same as if a discovery shaft were sunk thereon, and shall be equivalent thereto. [1955 c 357 § 1; 1899 c 45 § 3; RRS § 8624.]

78.08.072 Holding claim by geological, etc., survey—Report of survey. Any geological, geochemical, or geophysical survey which reasonably involves a direct expenditure on or for the benefit of each claim of not less than the one hundred dollars worth of annual assessment work required under federal statute or regulations shall hold such claim for not more than two consecutive years or more than a total of five years: *Provided*, That a written report of such survey shall be filed with the county auditor at the time annual assessment work is recorded as required under federal statute, and said written report shall set forth fully:

(1) The location of the survey performed in relation to the point of discovery or location notice and boundaries of the claim.

(2) The nature, extent, and cost of the survey.

(3) The date the survey was commenced and the date completed.

(4) The basic findings therefrom.

(5) The name, address, and professional background of the person or persons performing or conducting the survey. [1965 c 151 § 2; 1963 c 64 § 2; 1959 c 114 § 1.]

Reports of geological, etc., surveys: Chapter 78.06 RCW.

78.08.075 "Lode" defined. The term "lode" as used in RCW 78.08.050 through 78.08.140 shall be construed to mean ledge, vein or deposit. [1899 c 45 § 4; RRS § 8625. Formerly RCW 78.08.010.]

78.08.080 Amended certificate of location. If at any time the locator of any quartz or lode mining claim heretofore or hereafter located, or his assigns, shall learn that his original certificate was defective or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries or of taking in any additional ground which is subject to location, or in any case the original certificate was made prior to the *passage of this law, and he shall be desirous of securing the benefits of RCW 78.08.050 through 78.08.140, such locator or his assigns may file an amended certificate of location, subject to the provisions of RCW 78.08.050 through 78.08.140, regarding the making of new locations. [1899 c 45 § 5; RRS § 8626.]

***Reviser's note:** "passage of this law": 1899 c 45 (H.B. 272) passed the house, February 27, 1899; passed the senate, March 7, 1899, and was approved by the governor March 8, 1899.

78.08.081 Assessment work, affidavit of work performed. Within thirty days after the expiration of the period of time fixed for the performance of annual labor or the making of improvements upon any quartz or lode mining claim or premises, the person in whose behalf such work or improvement was made or some person for him knowing the facts, shall make and record in the office of the county auditor of the county wherein such claims are situate an affidavit or oath of labor performed on such claim. Such affidavit shall state the exact amount and kind of labor, including the number of feet of shaft, tunnel or open cut made on such claim, or any other kind of improvements allowed by law or by rules of mining districts made thereon. Such affidavit shall contain the section, township and range in which such lode is located if the location be in a surveyed area. [1955 c 357 § 3; 1899 c 45 § 6; RRS § 8627.]

When road building to apply as assessment work: RCW 78.08.140.

78.08.082 Affidavit is prima facie evidence. Such affidavit when so recorded shall be prima facie evidence of the performance of such labor or the making of such improvements, and such original affidavit after it has been recorded, or a certified copy of record of same, shall be received as evidence accordingly by all the courts of this state. [1899 c 45 § 7; RRS § 8628.]

78.08.090 Relocating abandoned claim. The relocation of a forfeited or abandoned quartz or lode claim shall only be made by sinking a new discovery shaft, or in lieu thereof performing at least an equal amount of development work within the borders of the claim, and fixing new boundaries in the same manner and to the same extent as is required in making a new location, or the relocater may sink the original discovery shaft ten feet deeper than it was at the date of commencement of such relocation, and shall erect new, or make the old monuments the same as originally required; in either case a new location monument shall be erected. [1949 c 12 § 2; 1899 c 45 § 8; RRS § 8629.]

78.08.100 Location of placer claims. The discoverer of placers or other forms of deposits subject to location and appropriation under mining laws applicable to placers shall locate his claim in the following manner:

First. He must immediately post in a conspicuous place at the point of discovery thereon, a notice or certificate of location thereof, containing (1) the name of the claim; (2) the name of the locator or locators; (3) the date of discovery and posting of the notice hereinbefore provided for, which shall be considered as the date of the location; (4) a description of the claim by reference to legal subdivisions of sections, if the location is made in conformity with the public surveys, otherwise, a description with reference to some natural object or permanent monuments as will identify the

claim; and where such claim is located by legal subdivisions of the public surveys, such location shall, notwithstanding that fact, be marked by the locator upon the ground the same as other locations.

Second. Within thirty days from the date of such discovery he must record such notice or certificate of location in the office of the auditor of the county in which such discovery is made, and so distinctly mark his location on the ground that its boundaries may be readily traced.

Third. Within sixty days from the date of discovery, the discoverer shall perform labor upon such location or claim in developing the same to an amount which shall be equivalent in the aggregate to at least ten dollars worth of such labor for each twenty acres, or fractional part thereof, contained in such location or claim: *Provided, however,* That nothing in this subdivision shall be held to apply to lands located under the laws of the United States as placer claims for the purpose of the development of petroleum and natural gas and other natural oil products.

Fourth. Such locator shall, upon the performance of such labor, file with the auditor of the county an affidavit showing such performance and generally the nature and kind of work so done. [1901 c 137 § 1; 1899 c 45 § 10; RRS § 8631.]

78.08.110 Affidavit as proof. The affidavit provided for in the last section, and the aforesaid placer notice or certificate of location when filed for record, shall be prima facie evidence of the facts therein recited. A copy of such certificate, notice or affidavit certified by the county auditor shall be admitted in evidence in all actions or proceeding with the same effect as the original and the provisions of RCW 78.08.081 and 78.08.082 shall apply to placer claims as well as lode claims. [1899 c 45 § 11; RRS § 8632.]

78.08.115 Application of RCW 78.08.050–78.08.140. All locations of quartz or placer formations or deposits hereafter made shall conform to the requirements of RCW 78.08.050 through 78.08.140 insofar as the same are respectively applicable thereto. [1899 c 45 § 12; RRS § 8633.]

78.08.120 Mining district rules and regulations. Any mining district organized in the state of Washington in accordance with the laws of the United States, shall have power to make rules and regulations for such mining district, providing such rules and regulations do not conflict with the laws of the state of Washington or of the United States. [1899 c 45 § 13; RRS § 8634.]

78.08.140 When road building to apply as assessment work. Any mining district shall have the power to make road building to mining claims within such district applicable as assessment work, or improvement upon such claims: *Provided,* That rules pertaining to such road building shall be made only at a public meeting of the miners of such district regularly called by the mining recorder of such district: *Provided further,* That such meeting shall be attended by at least twelve property

holders of such district, and that no such rule can be made without the assent of the majority of the property holders of such district, who are present at such meeting. Such meeting to designate where, when and how such road work shall be done, and shall designate some one of their number who shall superintend such road building or construction, and who shall receipt for such labor to the performer thereof, such receipts to be filed with the county auditor of the county in which such work is performed by the holder or holders of such receipts, and shall be received as prima facie evidence of labor performed as annual assessment work upon such claim or claims, as may be designated by an affidavit or oath of labor as provided for in RCW 78.08.081: *Provided*, That nothing in RCW 78.08.050 through 78.08.140 can be construed as being mandatory upon any owner or holder of mining property to perform labor upon any such road. [1899 c 45 § 14; RRS § 8635.]

Chapter 78.12

ABANDONED SHAFTS AND EXCAVATIONS

Sections

78.12.010	Shafts, excavations to be fenced.
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78.12.030	Order to serve notice.
78.12.040	Notice—Contents—Civil and criminal penalties.
78.12.050	Suit in name of state—Disposition of proceeds.
78.12.060	Procedure when shaft unclaimed.
78.12.061	Safety cage in mining shaft—Regulations.
78.12.062	Safety cage in mining shaft—Penalty.
78.12.070	Damage actions preserved.

78.12.010 Shafts, excavations to be fenced. Any person or persons, company, or corporation who shall hereafter dig, sink or excavate, or cause the same to be done, or being the owner or owners, or in the possession, under any lease or contract, of any shaft, excavation or hole, whether used for mining or otherwise, or whether dug, sunk or excavated for the purpose of mining, to obtain water, or for any other purpose, within this state, shall, during the time they may be employed in digging, sinking or excavating, or after they have ceased work upon or abandoned the same, erect, or cause to be erected, good and substantial fences or other safeguards, and keep the same in good repair around such works or shafts sufficient to securely guard against danger to persons and animals from falling into such shafts or excavations. [1890 p 121 § 1; RRS § 8857.]

78.12.020 Complaint—Contents. Three persons being residents of the county, and knowing or having reason to believe that the provisions of RCW 78.12.010 are being or have been violated within such county, may file a notice with any justice of the peace or police judge therein, which notice shall be in writing, and shall state—First, the location, as near as may be, of the hole, excavation or shaft. Second, that the same is dangerous to persons or animals, and has been left or is being worked contrary to the provisions of this chapter. Third, the name of the person or persons, company or corporation who is or are the owners of the same, if known, or if unknown, the persons who were known to be employed therein. Fourth, if abandoned and no

claimant; and Fifth, the estimated cost of fencing or otherwise securing the same against any avoidable accidents. [1890 p 121 § 2; RRS § 8858.]

78.12.030 Order to serve notice. Upon the filing of the notice, as provided in RCW 78.12.020, the justice of the peace or judge of the police court shall issue an order, directed to the sheriff of the county or to any constable or city marshal therein, directing such officer to serve a notice in manner and form as is prescribed by law for service of summons upon any person or persons or the authorized agent or agents of any company or corporation named in the notice on file, as provided in RCW 78.12.020. [1890 p 121 § 3; RRS 8859.]

Civil actions—Commencement of actions: Chapter 4.28 RCW.

78.12.040 Notice—Contents—Civil and criminal penalties. The notice thus served shall require the said persons to appear before the justice or judge issuing the same, at a time to be stated therein, not more than ten nor less than three days from the service of said notice, and show to the satisfaction of the court that the provisions of this chapter have been complied with; or if he or they fail to appear, judgment will be entered against him or them for double the amount stated in the notice on file; and all proceedings had therein shall be as prescribed by law in civil cases; and such persons, in addition to any judgment that may be rendered against them, shall be liable and subject to a fine not exceeding the sum of one hundred dollars for each and every violation of the provisions of this chapter, which judgments and fines shall be adjudged and collected as provided for by law. [1890 p 122 § 4; RRS § 8860.]

78.12.050 Suit in name of state—Disposition of proceeds. Suits commenced under the provisions of this chapter shall be in the name of the state of Washington, and all judgments and fines collected shall be paid into the county treasury for county purposes: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1969 ex.s. c 199 § 34; 1890 p 122 § 5; RRS § 8861.]

Disposition of fines, penalties and forfeitures: RCW 10.82.070.

78.12.060 Procedure when shaft unclaimed. If the notice filed with the justice of the peace, or police judge, as aforesaid, shall state that the excavation, shaft or hole has been abandoned, and no person claims the ownership thereof, said justice of the peace, or judge, shall notify the board of county commissioners of the county, or either of them, of the location of the same, and they shall, as soon as possible thereafter, cause the same to be so fenced, or otherwise guarded, as to prevent accidents to persons or animals; and all expenses thus incurred shall be paid as other county expenses: *Provided*, That nothing herein contained shall be so construed as to compel the county commissioners to fill up, fence or otherwise guard any shaft, excavation or

hole, unless in their discretion, the same may be considered dangerous to persons or animals. [1890 p 122 § 6; RRS § 8862.]

78.12.061 Safety cage in mining shaft—Regulations. It shall be unlawful for any person or persons, company or companies, corporation or corporations, to sink or work through any vertical shaft at a greater depth than one hundred and fifty feet, unless the said shaft shall be provided with an iron-bonneted safety cage, to be used in the lowering and hoisting of the employees of such person or persons, company or companies, corporation or corporations. The safety apparatus, whether consisting of eccentrics, springs or other device, shall be securely fastened to the cage, and shall be of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk, provided the cable shall break. The iron bonnet aforesaid shall be made of boiler sheet iron of a good quality, of at least three-sixteenths of an inch in thickness, and shall cover the top of said cage in such manner as to afford the greatest protection to life and limb from any matter falling down said shaft. [1890 p 123 § 7; RRS § 8863. Formerly RCW 78.36.850, part.]

Hoisting apparatus—Requirements: RCW 78.40.273.

Human capacity of cages—Attendant: RCW 78.40.287.

78.12.062 Safety cage in mining shaft—Penalty. Any person or persons, company or companies, corporation or corporations, who shall neglect, fail or refuse to comply with the provisions of RCW 78.12.061, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars. [1890 p 123 § 8; RRS § 8864. Formerly RCW 78.36.850, part.]

78.12.070 Damage actions preserved. Nothing contained in this chapter shall be so construed as to prevent recovery being had in a suit for damages for injuries sustained by the party so injured, or his heirs or administrator or administratrix, or anyone else now competent to sue in an action of such character. [1890 p 123 § 9; RRS § 8865.]

**Chapter 78.16
MINERAL AND PETROLEUM LEASES ON
COUNTY LANDS**

Sections

- 78.16.010 Leases authorized.
- 78.16.020 Order for lease—Terms—Option to purchase.
- 78.16.030 Sale and conveyance.
- 78.16.040 Option to surrender lands.
- 78.16.050 Disposition of royalties and rentals.
- 78.16.060 Surface rights.
- 78.16.070 Damages to owner.

78.16.010 Leases authorized. Whenever it shall appear to the board of county commissioners of any county in this state that it is for the best interests of said county and the taxing districts and the people thereof, that any mining claims, reserved mineral rights, or any other county owned or tax acquired property

owned by the county, either absolutely or as trustee, should be leased for the purpose of exploration, development, and removal of any minerals, oil, gas and other petroleum products therefrom, said board of county commissioners is hereby authorized to enter into written leases, under the terms of which any county owned lands or county owned mineral rights, or reserved mineral rights, are leased for the aforementioned purpose, with or without an option to purchase. Any such lease shall be upon terms and conditions as said county commissioners may deem for the best interests of said county and the taxing districts, and as in this chapter provided, and may be for such primary term as said board may determine and as long thereafter as minerals, including oil, and/or gas, may be produced therefrom. [1945 c 93 § 1; 1907 c 38 § 1; Rem. Supp. 1945 § 11312.]

Construction—1945 c 93: "Chapter 38, Laws of 1907, is amended by adding a new section to be designated as section 8, to read as follows:

Section 8. Nothing herein contained is intended to or shall be construed as affecting any existing rights granted under chapter 38, Laws of 1907." [1945 c 93 § 6.]

78.16.020 Order for lease—Terms—Option to purchase. When said commissioners, in their discretion, decide to lease said claims or properties as provided in RCW 78.16.010, they shall enter an order to that effect upon their records and shall fix the duration and terms and conditions of said lease, and in case an option to purchase is given shall fix the purchase price, which shall not be less than the total amount of the taxes, interest and penalties due at the time the property was acquired by the county, and may provide that any royalties paid shall apply and be credited on the purchase price, and said lease or lease and option shall be signed and executed on behalf of said county by said commissioners, or a majority of them. [1907 c 38 § 2; RRS § 11313.]

78.16.030 Sale and conveyance. Upon payment of the full purchase price, in cases where an option to purchase is given, a conveyance shall be executed to the purchaser by the chairman of the board of county commissioners. Such conveyance shall refer to the order of the board authorizing such leasing with the option to purchase, and shall be deemed to convey all the estate, right, title and interest of the county in and to the property sold; and such conveyance, when executed, shall be conclusive evidence of the regularity and validity of all proceedings hereunder. [1907 c 38 § 3; RRS § 11314.]

78.16.040 Option to surrender lands. The lessee under any such petroleum lease shall have the option of surrendering any of the lands included in said lease at any time, and shall thereby be relieved of all liability with respect to such lands except the payment of accrued royalties as provided in said lease. Upon such surrender, the lessee shall have the right for a period of one hundred twenty days following the date of such surrender, to remove all improvements placed by him

on the lands which have been surrendered. [1945 c 93 § 2; Rem. Supp. 1945 § 11314-1.]

78.16.050 Disposition of royalties and rentals. Any royalties or rentals received by the said county under any lease entered into under the provisions of this chapter, shall be divided among the various taxing districts entitled thereto, in the same proportion and manner as the purchase money for said lands would have been divided in the event the said properties had been sold. [1945 c 93 § 3; Rem. Supp. 1945 § 11314-2.]

78.16.060 Surface rights. Nothing in this chapter contained shall be construed as giving the county commissioners the right to lease the surface rights of tax acquired property, except that the lease of any property as in this chapter provided shall give the lessee the right to use such portions of the surface on said land as may be necessary or desirable to it in its business. [1945 c 93 § 4; Rem. Supp. 1945 § 11314-3.]

78.16.070 Damages to owner. In the event said lease shall be for reserved mineral rights on lands previously sold by said county with mineral rights reserved, as provided in chapter 19, Laws of 1943 [RCW 36.34.010], said lease shall contain a provision that no rights shall be exercised under said lease by the lessee, his heirs, executors, administrators, successors or assigns, until provision has been made by the lessee, his heirs, executors, administrators, successors or assigns to pay to the owner of the land upon which the rights reserved to the county are sought to be exercise [exercised], full payment for all damages to said owner by reason of entering upon said land; said rights to be determined as provided for in said chapter 19, Laws of Washington, 1943 [RCW 36.34.010]: *Provided, however,* That in the event of litigation to determine such damage, the primary term of such lease shall be extended for a period equal to the time required for such litigation, but not to exceed three years. [1945 c 93 § 5; Rem. Supp. 1945 § 11314-4.]

Chapter 78.40 COAL MINING CODE

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Reviser's note: (1) For earlier acts on this subject see: Code 1881 §§ 2628–2638, 1883 pp 25–28, 1885–6 pp 129–133, 1887–8 c 21, 1891 c 81, 1897 c 45, 1907 cc 77 and 105, 1909 cc 55, 57, 177 and 220, 1911 cc 63, 65 and 123, 1925 ex.s. c 15.

(2) Statutory authority for the position of chief state mine inspector and the state mining board, referred to throughout this chapter, was repealed by 1973 1st ex. sess. c 52 § 11, and section 2 of said act merged the division of mining safety of the department of labor and industries into the division of industrial safety and health, which replaced the former division of safety [RCW 43.22.010]. Inspection of coal mines is now handled by the supervisor of the division of industrial safety and health; cf. RCW 43.22.200 and 43.22.210.

ARTICLE I DEFINITION OF TERMS

78.40.010 Definitions. For the purpose of this chapter the terms and definitions contained therein shall be as follows:

Mine: The term "mine" shall mean all the excavations penetrating coal or other strata used in the opening, developing or operation of workings for the purpose of mining coal, operated by one operator, and all machinery, tramways, sidings, either above or below ground, in or adjacent to and belonging to said operation.

Shaft: The term "shaft" shall mean any vertical excavation in the earth or strata used as a means of ingress or egress, for hoisting or lowering of material, for ventilation or drainage, or any other purpose incidental to the operation of a mine.

Slope: The term "slope" shall mean any excavation in the earth or strata driven at an angle to the plane of the horizon, used as a means of ingress or egress, for hoisting or lowering of material, for ventilation or drainage, or other purpose incidental to the operation of a mine.

Airway: The term "airway" shall mean any underground passage the principal purpose of which is to carry air.

Working face: The term "working face" shall mean any portion of a mine from which coal or rock is being cut, removed, sheared, broken or loosened.

Opening: The term "opening" includes shafts, slopes, inclines, tunnels, levels, or any other means of access to a mine.

Map: The term "map" includes plans and projections, section tracing and print of an original plan, or section of a mine or portion thereof.

Plane: The term "plane" shall mean an inclined roadway, other than slopes, used for the transportation of coal, men or material.

Tunnel: The term "tunnel" shall mean any excavation in the earth or strata driven approximately horizontally, used in ingress and egress of men and material, or for ventilation, drainage or haulage.

Level—Gangway—Entry: The term "level", "gangway", or "entry" shall mean an excavation driven parallel, or nearly so, to the strike of the seam, and used for ventilation, traveling, haulage or drainage.

Sump: The term "sump" shall mean a catch-basin into which the drainage from a mine flows, and from which it is pumped directly or indirectly to the surface.

Crosscut—Breakthrough: The term "crosscut" or "breakthrough" shall mean an excavation driven to connect two parallel working places.

Inspector: The term "inspector" shall mean the person commissioned by the governor to inspect the coal mines, as hereinafter provided for in this chapter.

Deputy inspector: The term "deputy inspector" shall mean a person appointed by the inspector, to be a deputy mine inspector, as hereinafter provided for in this chapter.

Operator: The term "operator" shall mean any firm, company, corporation, or individual working any mine or any part thereof.

Manager or general manager: The term "manager" or "general manager" shall mean any person who shall have, on behalf of the operator, general supervision of the operation of any mine or group of mines.

Superintendent: The term "superintendent" shall mean the person who shall have, on behalf of the operator, immediate supervision, under the manager or operator, of any mine or group of mines.

Mine foreman: The term "mine foreman" shall mean a person whom the operator, manager or superintendent, shall place in charge of the workings of a mine, and of the persons employed in or about the same.

Assistant mine foreman: The term "assistant mine foreman" shall mean a person appointed by the management to assist in directing the operation of a mine or the persons employed in or about the same.

Fire boss: The term "fire boss" shall mean a person appointed by the management to inspect all the working places of a mine in his district.

Shot firer—Shot lighter: The term "shot firer" or "shot lighter" shall mean a person appointed by the mine foreman to inspect and fire shots used for the breaking of coal or rock, and to otherwise supervise the use of explosives in a mine.

Miner: The term "miner" shall mean a person employed underground to mine, cut, shear, break or loosen

coal or rock, either by hand, machinery or powder, load same when required, and do necessary timbering.

Company man: The term "company man" shall include any man or men employed in or about a mine and not mentioned in the foregoing definitions of terms.

Certificated man: The term "certificated man" shall mean any person holding a certificate of competency as provided for in this chapter.

Approved safety lamps: The term "approved safety lamps" shall mean any safety or electric lamp approved by the federal bureau of mines.

Permissible explosives: The term "permissible explosives" shall mean any explosives declared by the federal bureau of mines to be permissible for use in a mine, when said explosive is used as provided for by the federal bureau of mines.

Check weighman: The term "check weighman" shall mean an employee selected and paid by the miners, to inspect the weighing of the miners' coal that is being mined by the ton.

Weighman: The term "weighman" shall mean a person employed by the operator to weigh coal.

Terms not previously defined: All terms used in this chapter not hereinabove defined shall have their commonly accepted meanings as used in coal mines of this state. [1917 c 36 § 1; RRS § 8636. Formerly RCW 78.32.010.]

ARTICLE II INSPECTION DEPARTMENT

78.40.060 Coal mining code—Inspection department. See RCW 43.22.200, 43.22.210.

ARTICLE III EXAMINING BOARD

78.40.100 Certificates of competency—Examination—Applicant, citizen. All applicants for first and second class certificates of competency, shall be citizens of the United States. The state mining board with the addition of the chief state mine inspector, shall conduct the examination of applicants for first and second class certificates, and issue the same under the provisions of this chapter. [1943 c 211 § 1; 1927 c 306 § 8; 1917 c 36 § 12; Rem. Supp. 1943 § 8647. Formerly RCW 78.32.210, part and 78.32.240, part.]

Assistant mine foreman, fire boss, to have certificate—Temporary employment: RCW 78.40.315.

Definitions—Certificated man: RCW 78.40.010.

Foreman in charge underground—Exception: RCW 78.40.318.

Mine foreman to have certificate—Temporary mine foreman: RCW 78.40.312.

Superintendent acting as foreman: RCW 78.40.309.

78.40.103 Certificates of competency—Time and place of examination. Examinations for first and second class certificates shall be held yearly, or oftener, as the mine inspector may direct, but not more than thirty days per year shall be allowed for this work. The examinations shall be held at such places as the mine inspector shall direct. [1917 c 36 § 13; RRS § 8648. Formerly RCW 78.32.210, part.]

78.40.106 Certificates of competency—Notice of examination—Certificates; form, contents, fee. Notice of the place and date on which examinations for first and second class certificates are to be held shall be sent to each mine in the state, and shall be posted in a conspicuous place, at least fifteen days before the time set for the examination.

Certificates issued to candidates who pass the examinations shall be in such form as shall be prescribed by the examining board. The mine inspector shall keep a record in his department of all such certificates granted. Each certificate shall contain the full name, age and birthplace of the applicant; shall designate whether first class or second class; the average percentage made on the entire examination, and shall be valid only when signed by a majority of the board.

Each application for a first or second class certificate must be accompanied by a fee of two dollars, made payable to the state treasurer, to be applied to pay the salaries and expenses of the members of the examining board. [1917 c 36 § 14; RRS § 8649. Formerly RCW 78.32.220 and 78.32.230, part.]

78.40.109 Certificates of competency—Examination—First class certificates. Examinations for first class certificates shall cover the following subjects: Laws applying to mines in the state of Washington; methods of mine working and ventilation; mine fires; mine rescue work and appliances; first aid to the injured and actual experience in underground mining; methods of timbering, bratticing and blasting and educational standards for coal mines and coal mining. The general examination shall be in writing, and the manuscripts and other papers of all applicants, together with the tally sheets and the solution of each question as given by the examining board, shall be filed with the mine inspector as public documents. The papers may be destroyed one year from date of examination. In addition to the written examination, the applicants shall undergo an oral examination pertaining to explosive gases, safety lamps, first aid to the injured, mine rescue appliances and general mining subjects. All candidates shall be allowed the use of such textbooks as the board may deem proper during the examination.

Each candidate shall receive a certificate of competency if he makes an average of seventy-five percent on the examination, credits to be given as follows:

Practical experience, worthiness and general fitness	40 points
Oral examination	40 points
Written examination	20 points.

[1927 c 306 § 9; 1917 c 36 § 15; RRS § 8650. Formerly RCW 78.32.250.]

78.40.112 Certificates of competency. Examination—Second class certificates. Examinations for second class certificates shall cover the following subjects: The sections of the law of the state of Washington applying to the duties of men with second class certificates; mine ventilation and similar subjects; questions in regard to mine rescue work and appliances; first aid

to the injured; methods of timbering, bratticing, and blasting and educational standards for coal mines and coal mining.

The general examination shall be in writing and the manuscripts and other papers of all applicants, together with the tally sheets and the solution of each question as given by the examining board shall be filed with the mine inspector as public documents. These papers may be destroyed one year from date of examination.

In addition to the written examination the applicant shall undergo an oral examination. The examination shall include the use and care of safety lamps; work in timbering; bratticing, charging and firing blasts; work in first aid to the injured, and, wherever possible, in the use of mine rescue apparatus, and other work which men with second grade certificates may be called upon to do in pursuance of their duties. An average percentage of seventy-five on the whole examination shall be required for qualification. Credits to be given as follows:

Practical experience, worthiness and general fitness	50 points
Oral examination ..	30 points
Written examination	20 points.

[1927 c 306 § 10; 1917 c 36 § 16; RRS § 8651. Formerly RCW 78.32.260.]

78.40.115 Certificates of competency—Cancellation or suspension of certificates. The certificate of any mine foreman, assistant mine foreman, or fire boss, may be canceled or suspended by any examining board upon notice and hearing as hereinafter provided. If it shall be established in the judgment of said board that the holder of said certificate has become unworthy to hold said certificate by reason of violation of the law, or obtained by fraud, or of intemperate habits, or incapacity, said certificate may be canceled or suspended for any period not to exceed two years: *Provided*, That any person against whom charges or complaints are made hereunder shall have the right to appear before said board and defend himself against such charges, and he shall be given fifteen days' notice in writing of such charges, previous to the hearing. The meeting of the board of examiners to investigate charges against the holder of any certificate of competency of any grade shall be held within a reasonable time after such charges are made. In no case shall the meeting of said board be deferred longer than thirty days after the charges are made. Any holder of a first or second class certificate, who shall have had his certificate canceled, shall be eligible to take an examination for a new certificate on and after two years from date of cancellation, by setting forth in his application the time, place and causes of cancellation of his former certificate. [1917 c 36 § 18; RRS § 8653. Formerly RCW 78.32.270.]

78.40.118 Certificates of competency—Lost certificates—Duplicates. In case of the loss or destruction of a certificate, the board may supply a copy thereof to the person losing the same, upon the payment of the

sum of fifty cents: *Provided*, It shall be shown to the satisfaction of the board that the loss has actually occurred. [1917 c 36 § 19; RRS § 8654. Formerly RCW 78.32.280.]

78.40.121 Certificates of competency—Forged or false certificates—Penalty. Any person or persons who shall forge or counterfeit a certificate, or knowingly make or cause to be made any false statement in any certificate under this chapter, or any official copy of same, or shall urge others to do so, or shall use any such forged or false certificate, or any official copy of such, or shall make, give, alter or produce, or make use of any false declaration, representation or statement in any certificate or copy thereof, or any document containing the same, shall be guilty of a misdemeanor. [1917 c 36 § 20; RRS § 8655. Formerly RCW 78.32.290.]

ARTICLE IV CERTIFICATED MEN

78.40.130 To have certificates. Men employed in the coal mines of the state of Washington as mine foreman, assistant mine foreman, or fire bosses, shall have certificates of competency as heretofore provided. [1917 c 36 § 21; RRS § 8656. Formerly RCW 78.32.200, part.]

78.40.133 To have certificates—Classes. Such certificates of competency shall be first class as mine foreman, and second class as assistant mine foreman or fire boss. A first class certificate shall be considered as including the second class certificate also. [1917 c 36 § 22; RRS § 8657. Formerly RCW 78.32.200, part.]

78.40.136 Applications for examinations—Fee. Applications for examination for first and second class certificates must be made in writing to the mine inspector and must be accompanied by an affidavit showing that the applicant is eligible as provided for under RCW 78.40.139 (qualifications of candidates for certificates of competency). Each application must be accompanied by a fee of two dollars. [1917 c 36 § 23; RRS § 8658. Formerly RCW 78.32.230, part.]

78.40.139 Qualifications of candidates. In no case shall a certificate of competency be granted to any candidate until he shall satisfy the board of examiners, which is holding the examination, by qualifying as follows, or by service certificate as hereafter provided for:

- (1) If a candidate for a first class certificate, that he has had at least five years' experience in and about the actual workings of a coal mine, and is at least twenty-five years of age.
- (2) If a candidate for a second class certificate, that he has had at least one year's experience in the underground workings of a coal mine, and is at least twenty-three years of age.
- (3) If a candidate for either first or second class certificate, that he has taken a course in mine rescue and first aid training equivalent to the work required by the federal bureau of mines for a certificate of competency in these subjects.

Provided, That when satisfactory evidence is submitted to the examining board showing the work the candidate for a first class certificate has completed in any mining course in any university, college, or correspondence school, the board may in lieu of actual experience allow him credit for not more than eighteen months on his practical experience for such work completed. [1917 c 36 § 24; RRS § 8659. Formerly RCW 78.32.240, part.]

78.40.142 Qualifications—Foreman. No one shall be allowed to act as a mine foreman of a coal mine in this state except he be the holder of a first class or service certificate under this chapter. [1917 c 36 § 25; RRS § 8660. Formerly RCW 78.32.440, part.]

78.40.145 Qualifications—Assistant foreman or fire boss. No one shall be allowed to act as assistant mine foreman or fire boss in any coal mine in this state, except that he be the holder of a second class or service certificate under this chapter. [1917 c 36 § 26; RRS § 8661. Formerly RCW 78.32.440, part.]

ARTICLE V VENTILATION

78.40.160 Minimum quantity of air required. The operator, or superintendent, of every coal mine shall provide and maintain ample mechanical means of ventilation to furnish a constant and adequate supply of pure air for employees in the mine. The minimum quantity of air shall be one hundred cubic feet per minute for each person employed in the mine, and five hundred cubic feet per minute for each horse or mule, and as much more as may be necessary to keep the mine free from dangerous and explosive gases. [1947 c 166 § 2; 1917 c 36 § 27; Rem. Supp. 1947 § 8662. Prior: 1897 c 45 § 4, part; 1891 c 81 § 9, part; 1887 c 21 § 4, part; 1883 p 28 § 18, part; Code 1881 § 2635, part. Formerly RCW 78.36.400.]

78.40.163 Separate air currents for each division. Every mine shall be divided into districts or splits of not more than seventy men in each district or split (unless in the judgment of the inspector it is impracticable to comply with this requirement, in which case a larger number, not to exceed ninety persons, may be permitted to work therein). Each district or split shall be supplied with a separate current of fresh air. The return air from each district or split, when from seventy to ninety men are employed, shall be conducted direct or through an overcast or undercast to the main return airway. [1917 c 36 § 28; RRS § 8663. Prior: 1897 c 45 § 4, part. Formerly RCW 78.36.410.]

78.40.166 Ventilation to be sufficient for safety and health. The ventilation shall be conducted to all working places in the mine in sufficient quantities to dilute, render harmless and carry off the smoke, noxious and other dangerous gases generated therein, to such an extent that all working places, traveling roads, and such other places as may be necessary for the general safety of the mine, shall be in a safe and healthful condition.

[1917 c 36 § 29; RRS § 8664. Prior: 1897 c 45 § 4, part; 1891 c 81 § 9, part; 1887 c 21 § 4, part; 1883 p 28 § 18, part; Code 1881 § 2635, part. Formerly RCW 78.36.420.]

78.40.169 Measurement of air. The quantity of air passing a given point shall be ascertained by an anemometer, the measurements to be taken by the mine foreman, or his assistant, at least once each week at or near the main inlet and outlet of the mine, and the inlet and outlet for each district or split, and also in the last crosscut or breakthrough nearest to face of entry, gangway or air course beyond the last breast, chute or room, turned, and in the top crosscut or breakthrough between the two inside working breasts, chutes or rooms, also in the top crosscut or breakthrough between the two outside working breasts, chutes or rooms. [1917 c 36 § 30; RRS § 8665. Prior: 1909 c 57 § 1, part; 1897 c 45 § 5, part. Formerly RCW 78.36.430.]

78.40.172 Measurement of air—Time for taking. Weekly measurements shall also be taken of air traveling through pillars that are being drawn. Said measurements shall be taken on the days when the men are at work. [1917 c 36 § 31; RRS § 8666. Formerly RCW 78.36.440, part.]

78.40.175 Measurement of air—Record. A record of all air measurements shall be entered in a book provided for that purpose and kept at the mine. [1917 c 36 § 32; RRS § 8667. Prior: 1909 c 57 § 1, part; 1897 c 45 § 4, part. Formerly RCW 78.36.440, part.]

78.40.178 Fire bosses in gaseous mines. In every coal mine in which inflammable gas has been found within the preceding twelve months, or spontaneous combustion occurs, a fire boss, or fire bosses, shall be appointed, who shall, within three hours before the time for commencing work in any part of the mine, inspect with an approved safety lamp all working places, and shall make a true report of the condition thereof. All new coal mines shall comply with the sections of this chapter pertaining to the regulation of gaseous mines. [1947 c 166 § 3; 1917 c 36 § 33; Rem. Supp. 1947 § 8668. Formerly RCW 78.32.580.]

78.40.181 Fire boss to report on safety of mine. Where fire bosses are employed workmen shall not go to work in the mine until the same and the traveling way leading thereto are reported safe by the fire boss or fire bosses so inspecting. Every such report shall be recorded as provided for under the duties of fire bosses, RCW 78.40.438. [1917 c 36 § 34; RRS § 8669. Formerly RCW 78.32.620.]

78.40.184 Fan operation at nongaseous mines. At nongaseous mines the fan may be stopped during a suspension of work, temporary or otherwise. However, it must be started two hours before employees are admitted to the mine. [1917 c 36 § 35; RRS § 8670. Formerly RCW 78.36.450.]

78.40.187 Continuous operation of fans at gaseous mines. Every main fan at gaseous mines shall be kept in operation continuously, day and night, unless operations are definitely suspended for a period of one week or more: *Provided*, That should it at any time become necessary to stop any fan at any mine, gaseous or non-gaseous, on account of accident to part of the machinery connected therewith, or by reason of any other unavoidable cause, it shall be the duty of the mine foreman, or the assistant mine foreman, in charge, after having first provided for the safety of the persons employed in the mine, to order said fan stopped for necessary repairs. [1919 c 201 § 2; 1917 c 36 § 36; RRS § 8671. Prior: 1897 c 45 § 9. Formerly RCW 78.36.460.]

78.40.190 Ventilating pressure to be registered—Types and location of fans. Every main ventilating fan shall be provided with a recording instrument by which the ventilating pressure of the fan shall be registered, and the registration of each day, with the date thereof, shall be kept in the office of the mine for future reference for one year, the same to be produced upon request of the inspector.

No fan, unless driven by electricity or compressed air, shall be placed in any mine. In gaseous mines, if the fan is electrically driven, the motor and starter shall be located in pure intake air, and shall not be less than twenty-five feet outby the last open crosscut. [1943 c 211 § 2; 1917 c 36 § 37; Rem. Supp. 1943 § 8672. Formerly RCW 78.36.470, part.]

78.40.193 Furnace, unlawful ventilation. It shall be unlawful to use a furnace for ventilation in any coal mine in the state. [1917 c 36 § 38; RRS § 8673. Prior: 1891 c 81 § 9, part; 1887 c 21 § 4, part. Formerly RCW 78.36.470, part.]

78.40.196 Air bridges, undercasts, overcasts—Construction. In every mine all permanent air bridges, undercasts or overcasts, shall be substantially built of ample strength. If built of wood they must be covered with fireproof material on all exposed sides; or they must be driven through the solid strata. [1917 c 36 § 39; RRS § 8674. Formerly RCW 78.36.500.]

78.40.199 Ventilating doors to close automatically. All doors used in assisting or in any way affecting the ventilation shall be so hung that they will close automatically. [1917 c 36 § 40; RRS § 8675. Formerly RCW 78.36.480, part.]

78.40.202 Doors to be hung in pairs—Extra door. All permanent doors on main haulage roads affecting main air currents shall be hung in pairs and so placed that when one door is open, another which has the same effect upon the same air current, shall be and remain closed and thus prevent any temporary stoppage of the air current. An extra door shall be so placed and kept standing open as to be out of reach of accident, and arranged so that it can be closed should one or both of the other doors be out of order. [1917 c 36 § 41;

RRS § 8676. Prior: 1897 c 45 § 4, part; 1891 c 81 § 17. Formerly RCW 78.36.480, part.]

78.40.205 Self-acting doors or attendant. The inspector may require either self-acting doors of an approved type, or an attendant at permanent doors that control the air current on any main haulage roads through which cars are hauled, for the purpose of opening and closing it for the employees and cars to pass in and out from the workings. A hole for shelter shall be provided at each door, to protect the attendant from danger from cars while performing his duty. Persons employed for this purpose shall remain at the doors at all times during working hours: *Provided*, That the same attendant may attend two doors if his absence from the first door does not endanger the safety of the employees. [1917 c 36 § 42; RRS § 8677. Formerly RCW 78.36.490.]

78.40.208 Stoppings between airways—Construction. In all mines, all new permanent stoppings in crosscuts or breakthroughs between the main intake and return airways shall be substantially built of masonry, concrete, or blocks of timber. Renewals of old stoppings shall be built as above. When timber is used the same must be faced with concrete or other incombustible material. [1917 c 36 § 43; RRS § 8678. Formerly RCW 78.36.510.]

78.40.211 Stoppings between airways—Airtight stoppings. Stoppings on levels between intake and return airways shall be substantially built and made as near airtight as possible. On levels driven more than two thousand feet, stoppings shall be built of masonry, concrete or blocks of timber. [1917 c 36 § 44; RRS § 8679. Formerly RCW 78.36.520.]

78.40.214 Wood stoppings to get air to working places. Stoppings shall be built in crosscuts or breakthroughs, between breasts, chutes or rooms, or other working places, to conduct the ventilation to the working places. However, such stoppings may be built of wood. [1917 c 36 § 45; RRS § 8680. Formerly RCW 78.36.530, part.]

78.40.217 Outlets, number required—Exceptions. It shall be unlawful for the owner, operator or superintendent of any mine, or the agent of such owner, operator or superintendent, to employ any person or persons in such mine, or permit any person or persons to be in such mine for the purpose of working therein, unless there are provided and maintained in connection with and leading from such mine, in addition to the hoisting shaft, slope or other place of delivery not less than two openings or outlets to the surface, or one outlet to the surface and one underground passage leading to a contiguous mine; said openings or outlets to be separated from each other and from such hoisting shaft, slope or other place of delivery, by a stratum of not less than fifty feet in thickness, at and through which openings or outlets safe and ready means of ingress and egress are at all times available by not less than three

routes, for any person or persons employed in said mine; and in connection with and leading from each seam or stratum of coal being worked in said mine, and from every lift thereof, not less than two openings or outlets leading directly or indirectly to the surface, and separated by a stratum of not less than fifty feet in thickness; at and through which two openings safe and ready means of ingress and egress are at all times available by not less than two routes for any person or persons employed in said stratum or seam of coal or lift thereof. This section shall not apply to a mine while being worked for the purpose of making communication between said outlets, or to open a seam or stratum of coal, or new lift thereof, so long as not more than twenty persons are employed at any time in such part of a mine, or new lift of a mine; neither shall it apply to any mine or part of a mine in which any outlet has been rendered unavailable by reason of the final robbing of pillars, previous to abandonment, so long as not more than twenty persons are employed in such mine or any part of such mine at one time.

This section shall apply only to mines or parts of mines which shall be developed or in which development shall be started after this chapter shall go into effect, but it shall not be construed to permit any openings or outlets now in use for the safety of men to be abandoned unless other such openings are substituted therefor. [1919 c 201 § 3; 1917 c 36 § 46; RRS § 8681. Prior: 1887 c 21 § 3, part; 1883 p 27 § 17, part; Code 1881 § 2634, part. Formerly RCW 78.34.710.]

78.40.220 Distances allowed from outlets or passages for removal of coal. It shall be unlawful for the owner, operator or superintendent of any mine to loosen or remove, or cause or permit to be loosened or removed from its original position, any coal within a distance of two hundred and fifty feet on either side of any hoisting slope, or within a distance of fifty feet on either side of any permanent airway, or escapeway, or within twenty-five feet of any level or gangway, or any parallel airway to any level or gangway, except for the purpose of driving air and escapeways, crosscuts and such other passages as may be necessary for the proper operation of the mine: *Provided*, That if the inspector shall deem it safe to permit coal to be loosened or removed within a distance nearer than two hundred and fifty feet from any hoisting slope he may grant permission to the operator to remove such coal within a distance of not less than one hundred and fifty feet of such hoisting slope, by issuing a written permit therefor. This section shall not be construed to prevent the drawing of pillars previous to the final abandonment of the mine. [1919 c 201 § 4; 1917 c 36 § 47; RRS § 8682. Formerly RCW 78.34.730.]

78.40.223 Crosscuts—Requirements. Crosscuts between room, breasts and chutes shall be made not to exceed sixty feet apart.

Crosscuts between gangways, levels, airways and counters, or main slopes and main air courses, shall not exceed sixty feet, unless they may be properly ventilated

by sufficient brattices. [1917 c 36 § 48; RRS § 8683. Formerly RCW 78.34.820.]

78.40.226 Conducting air to crosscuts. The required air current shall be conducted to the crosscut nearest the face of each entry, gangway, breast or chute. [1917 c 36 § 49; RRS § 8684. Formerly RCW 78.36.530, part.]

78.40.229 Danger signs. Danger signs in all mines shall be uniform, and of a design submitted by the mine inspector. All danger signs shall be kept in good condition, and no defective sign shall be allowed to remain in any mine. [1917 c 36 § 50; RRS § 8685. Formerly RCW 78.34.780.]

ARTICLE VI MAPS AND PLANS

78.40.235 Survey and map of mine. The operator of every coal mine in this state shall make, or cause to be made, an accurate transit survey and an accurate map or plan of such mine, drawn to the scale of one hundred feet to the inch, on which shall appear the name of the state, county and township in which the mine is located; the designation of the mine, the name of the company or owner; the certificate of the mining engineer or surveyor as to the accuracy and date of the survey; the direction of the true meridian, and the scale to which the drawing is made. [1917 c 36 § 51; RRS § 8686. Prior: 1909 c 117 § 1(a); 1891 c 81 § 1, part; 1883 c 21 § 16, part; Code 1881 § 2633, part. Formerly RCW 78.38.800.]

78.40.238 Maps to show surface objects. Every such map or plan shall correctly show the surface boundary lines of the coal rights pertaining to each mine, and all section or quarter section lines or corners within the same; the lines of town lots and streets, the tracks and sidetracks of all railroads and the location of all wagon roads, rivers, streams, lakes or ponds, with depth shown, all buildings, landmarks and principal objects on the surface. [1917 c 36 § 52; RRS § 8687. Prior: 1909 c 117 § 1(b); 1891 c 81 § 1, part; 1883 c 21 § 16, part; Code 1881 § 2633, part. Formerly RCW 78.38.810.]

78.40.241 Maps to show underground conditions. For the underground workings said maps shall show all shafts, slopes, tunnels or other openings to the surface or to the workings of a contiguous mine; all excavations, entries, rooms and crosscuts; the location of pumps, hauling engines, engine planes, abandoned works, firewalls and standing water; and the boundary line of any surface outcrop of the seam. Sea level datum and pitch of seams shall be placed on the maps at top and bottom of slopes and shafts, at ends of all gangways and at top of escapeways. [1917 c 36 § 53; RRS § 8688. Prior: 1909 c 117 § 1(c); 1891 c 81 § 1, part; 1883 c 21 § 16, part; Code 1881 § 2633, part. Formerly RCW 78.38.820.]

78.40.244 Separate map for each seam. A separate map, drawn to the same scale in all cases, shall be made of each and every seam worked in any mine, and the

maps of all such seams shall show all shafts, inclined planes or other passageways connecting the same, and shall show the sea level datum and pitch of seams, as provided in RCW 78.40.241. [1917 c 36 § 54; RRS § 8689. Prior: 1909 c 117 § 1(d). Formerly RCW 78.38.830.]

78.40.247 Separate surface maps. A separate map shall also be made of the surface whenever the surface buildings, lines or objects are so numerous as to obscure the details of the mine workings if drawn upon the same sheet with them, and in such cases the surface map shall be drawn upon transparent cloth or paper, so that it can be laid on the map of the underground workings and thus truly indicate the local relation of lines and objects on the surface to the excavations of the mine. [1917 c 36 § 55; RRS § 8690. Prior: 1909 c 117 § 1(e). Formerly RCW 78.38.840.]

78.40.250 Maps, where filed. The original or true copies of all such maps shall be kept in the office of the mine, and prints thereof shall also be furnished to the mine inspector, and to the division of mines and geology of the department of conservation and development. The maps so delivered to the inspector shall be the property of the state, and shall remain in the custody of the inspector during the term of his office, and be delivered by him to his successor in office; they shall be kept at the office of the inspector, and be open only to the inspector or his deputy for his examination, and he shall not permit any copies of the same to be made. The maps delivered to the division of mines and geology shall be the property of the state and be kept in the custody of the supervisor of the division as a permanent record in his files, and shall be held as confidential information unless released by written permission of the owner or operator. [1947 c 87 § 1; 1917 c 36 § 56; Rem. Supp. 1947 § 8691. Prior: 1909 c 117 § 1(g); 1891 c 81 § 1, part; 1883 c 21 § 16, part; Code 1881 § 2633, part. Formerly RCW 78.38.850.]

Department of conservation and development: See note following title digest.

78.40.253 Annual extension of survey—Maps to be changed. An extension of the last preceding survey of every mine in active operation shall be made once in every twelve months prior to July 1st of every year, and the results of said survey, with the date thereof, shall be promptly and accurately entered upon the original maps and all copies of same so as to show all changes in plan or new work in the mine and all extensions to the old workings which have been made since the last preceding survey. The said changes and extensions shall be entered upon the copies of the maps in the hands of said inspector, or a new copy furnished and the old copy returned to the operator. [1917 c 36 § 57; RRS § 8692. Prior: 1909 c 117 § 1(h); 1891 c 81 § 1, part; 1883 c 21 § 16, part; Code 1881 § 2633, part. Formerly RCW 78.38.860.]

78.40.256 Final survey and map. When any coal mine is worked out or is about to be abandoned or indefinitely closed, the operator of the same shall make or cause to be made a final survey of all parts of such mine, and the results of the same shall be duly extended on all maps of the mine and a copy of such final survey shall be filed with the mine inspector, so as to show all excavations and the most advanced workings of the mine, and their exact relation to the boundary or section lines of the surface. [1917 c 36 § 58; RRS § 8693. Prior: 1909 c 117 § 1(i); 1891 c 81 § 1, part; 1883 c 21 § 16, part; Code 1881 § 2633, part. Formerly RCW 78.38.870.]

78.40.259 Failure to furnish maps—Penalty. Whenever an operator of any mine shall neglect or refuse or for any cause not satisfactory to the mine inspector, fail for the period of three months to furnish said inspector the map or plan of such mine, or a copy thereof, or the extensions thereto, as provided in this article, such operator shall be deemed guilty of a misdemeanor, and the inspector is hereby authorized to make or cause to be made an accurate plan or map of such mine at the cost of the operator thereof, and the cost of the same may be recovered from the operator in an action at law brought in the name of the inspector, for his use. [1917 c 36 § 59; RRS § 8694. Prior: 1909 c 117 § 2; 1891 c 81 § 2. Formerly RCW 78.38.880.]

78.40.262 Resurveys and maps—Expense. The mine inspector may order a survey to be made of the workings of any mine, in addition to the regular annual survey, the results to be extended on the maps of the same and copies thereof, whenever the safety of the workmen, unlawful injury to the surface, unlawful encroachment on adjoining property, or the safety of an adjoining mine requires it.

If the inspector shall believe any map required by this chapter is materially inaccurate or imperfect, he is authorized to make or cause to be made a correct survey and map at the expense of the operating company, the cost recoverable as for debt: *Provided*, If such test survey shows the operator's map to be practically correct, the state shall be liable for the expense incurred, payable in such manner as other state accounts incurred by the mine inspector. [1917 c 36 § 60; RRS § 8695. Prior: 1909 c 117 §§ 1(j) and 2; 1891 c 81 § 2. Formerly RCW 78.38.890.]

ARTICLE VII HOISTS AND HOISTING

78.40.270 Signaling apparatus required. The owner, operator or agent of every coal mine operated by shaft or slope, shall provide efficient means of signaling between the top and bottom thereof and each intermediate working level, by an electric bell or other equally satisfactory signaling device, and also a uniform code of signals for use therewith.

The operator or the superintendent shall provide, and hereafter maintain in good condition from the top to the bottom of every shaft or slope, and at each alternate intermediate working level from or to which persons or

materials are lowered or hoisted, a telephone or metal tube of proper diameter, suitably adjusted to the free passage of sound, through which conversation may be held and understood between persons at the top and bottom of said shaft or slope. [1917 c 36 § 61; RRS § 8696. Prior: 1907 c 105 § 2, part; 1891 c 81 § 16, part; 1887 c 21 § 6, part; 1885 p 132 § 24, part. Formerly RCW 78.36.800.]

78.40.273 Hoisting apparatus—Requirements. For the purpose of hoisting or lowering men in any shaft or slope the owner, operator or agent thereof shall provide:

(1) A type of hoisting apparatus of sufficient strength to hold twice the maximum weight of the cage or cars loaded with men at any point on the shaft or slope. Each hoisting apparatus to be equipped with a brake or brakes on each drum of sufficient power to fully control the speed of the cage or cages or cars in such shaft or slope.

(2) An efficient indicator that will show at all times the true position of the cage or cages or cars attached to each hoist.

(3) An efficient device for the prevention of overwinding shall be attached to every hoisting apparatus hereafter put in service for hoisting or lowering persons in a shaft.

(4) A cage with a floor free from all obstructions must be provided for all shafts. Such cage shall be solidly constructed of heavy timber or iron beams for the frame, sufficient to withstand severe shocks under strains, and shall be covered with a substantially supported bonnet of boiler iron to protect persons riding in the cage from anything falling down the shaft. Each cage must be equipped with chains, bars or gates at each end, which must be always in place when men are hoisted or lowered. Each cage must also be equipped with efficient safety catches to prevent the cage from falling down the shaft in the event of the rope breaking. All rope links or chains attached to cars or cages must be of ample strength with a factor of safety of not less than five to one on the maximum load.

(5) On all regular man trips being hoisted on slopes of twenty degrees or more, each car shall be attached to the car ahead by two or more separate connections, each one of which must be of ample strength to hold any load placed upon it by the breaking of the other. And the first car shall be secured to the socket by an extra cable or chain securely attached to the car: *Provided*, That any other approved safety device may be used in lieu of those hereinabove in this paragraph (5) mentioned. On all slopes of less than twenty degrees a safety rope shall extend from the main rope to the last car, or other approved safety device that will answer the same purpose.

(6) At all shafts, when hoisting men or material, there must be provided a competent person at the top and bottom to have control of the admission of cars, material or persons, to the cage operating in such shaft.

(7) Safety gates must be provided at the top and at any intermediate landing of a shaft, or of a slope inclined over sixty degrees from the horizontal, such gates

to be so constructed that when closed access to the shaft or slope will be entirely cut off; and such gates to be kept closed at all times when the rope rider or other person in charge of such landing is not present.

(8) At distances not to exceed sixty feet on inclined planes or slopes where men are employed during operations suitable holes for refuge must be provided, these to be cut into the strata not less than two and one-half feet deep and four feet wide and five feet high and level with the road. Such holes to be located at points easy of access and to be kept whitewashed. [1917 c 36 § 62; RRS § 8697. Prior: 1907 c 105 § 2, part; 1891 c 81 § 16, part; 1887 c 21 § 6, part. Formerly RCW 78.36.820.]

Safety cage in mining shaft—Regulations: RCW 78.12.061, 78.12.062.

78.40.276 Strength and inspection of safety devices. All ropes, chains, safety catches, etc., as enumerated above, must be of ample strength to support a strain equivalent to five times the maximum load, and must be kept in safe condition; and, furthermore, they must be inspected at least once in twenty-four hours by a competent person appointed by the superintendent for that purpose, and a record of such examinations, reporting all defects that may have been found, must be written in ink in a book kept for that purpose at the mine office. Any defects must be corrected immediately and no persons shall be lowered into or hoisted from the mine by defective apparatus; and, furthermore, all coupling links, pins and chains used on main haulage in hoisting or lowering men on a slope shall be annealed once in every three months. Pins and couplings on all other cars must be annealed once a year. [1917 c 36 § 63; RRS § 8698. Prior: 1909 c 117 § 3, part; 1891 c 81 § 4, part. Formerly RCW 78.36.830.]

78.40.279 Testing safety catches. The following tests of safety catches on cages shall be made once every six months: The cage shall be secured by passing a heavy hemp rope through the bridle chain ring or link and fastening both ends of the ropes to guides or to diagonally opposite posts of head frame, drawing the rope taut. A blocking to be passed below the cage to support same before hoisting rope is taut. The hoisting engineer shall then slack away until the cage is suspended on the hemp rope with at least four feet of the slack hoisting rope on top of it. Everything being in readiness the hemp rope shall be suddenly cut. If the safety catches stop the cage before it rests upon the blocking, the apparatus shall be considered efficient. [1917 c 36 § 64; RRS § 8699. Formerly RCW 78.36.840.]

78.40.281 Allowable proximity of structures to ventilating fan or main airway. No building or structure shall be erected within seventy-five feet of any main ventilating fan or main entrance to or exit from main airway slope or drift, except the tippie building and trestle thereto, unless same shall be built of fireproof material, and no fires shall be allowed in or about said tippie or trestle, except it be in a fire box of a boiler: *Provided*, That this section shall not apply to any shaft or slope heretofore sunk, or to any building heretofore erected,

or to prospecting or development work otherwise regulated by this chapter. [1917 c 36 § 65; RRS § 8700. Formerly RCW 78.36.540.]

78.40.284 Men and materials not to be hoisted together. No person, except mine officials, cagers or repair men, shall be hoisted or lowered in a cage with a loaded or empty car or with material of any kind on either the same or opposite cage. [1917 c 36 § 66; RRS § 8701. Prior: 1891 c 81 § 19, part; 1887 c 21 § 7, part. Formerly RCW 78.36.860.]

Riding cages and cars in shafts and slopes prohibited: RCW 78.40.636.

78.40.287 Human capacity of cages—Attendant. Not more than six persons per ton of hoisting capacity shall be hoisted or lowered in any cage or car in any shaft, slope or incline at any one time: *And, provided,* That not more than one person for each three square feet of floor surface shall be hoisted or lowered in any cage at any one time: *And provided further,* That in shafts, slopes or inclines, at all hoists not equipped with overwinding device, a competent attendant, in addition to the hoistman, shall be stationed in close proximity to engine controls at such time as men are being hoisted or lowered on regular man trips. [1943 c 211 § 3; 1917 c 36 § 67; Rem. Supp. 1943 § 8702. Prior: 1891 c 81 § 19, part; 1887 c 21 § 7, part. Formerly RCW 78.36.870.]

Hoisting apparatus—Requirements: RCW 78.40.273.

78.40.290 Restrictions on hoisting speed. No person or persons other than trip riders or mine officials shall be hoisted or lowered at a speed exceeding six hundred feet per minute. [1917 c 36 § 68; RRS § 8703. Formerly RCW 78.36.880, part.]

78.40.293 Hoistmen—Qualifications. An engineer placed in charge of the hoisting engine, where men are being hoisted or lowered, must be a sober, competent person not less than eighteen years of age, and in good physical and mental condition for such work; and no person shall be permitted to handle or operate any such hoist until his health has been certified by a reputable physician and his competency determined and certified by the state mining board upon such examination as it may prescribe. [1971 ex.s. c 292 § 68; 1939 c 51 § 1; 1917 c 36 § 69; RRS § 8704. Prior: 1891 c 81 § 19, part; 1887 c 21 § 7, part; 1885 p 132 § 4, part. Formerly RCW 78.36.890.]

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

78.40.296 Riding loaded cars—Traveling ways for men. No person, except those whose regular duties require it, shall be allowed to ride in or on the outside of any loaded car or skip in any slope. In any mine opened after this chapter goes into effect, separate traveling ways shall be provided and no employee, except those whose regular duty compels them to use a slope or incline, will be allowed to walk up or down the same while they are in operation. [1917 c 36 § 70; RRS §

8705. Prior: 1891 c 81 § 19, part; 1887 c 21 § 7, part; 1885 p 132 § 24, part. Formerly RCW 78.34.120, part.]

Foot travel on slopes, roads, prohibited: RCW 78.40.633.

Riding cages and cars in shafts and slopes prohibited: RCW 78.40.636.

Riding full cars prohibited—Exception: RCW 78.40.639.

ARTICLE VIII DUTIES OF OPERATORS

78.40.300 Liability of foremen as agents of operators. For the purpose of this chapter the superintendent or mine foreman in direct charge of the operation of any mine or mines, shall be considered as the agent of the owner or operator, and shall be held jointly responsible with the owner or operator for any failure to comply with the sections of this chapter governing owners, operators or agents. [1917 c 36 § 71; RRS § 8706. Formerly RCW 78.38.510.]

78.40.303 Report of deaths and injuries. Every operator of a coal mine shall make, or cause to be made, for the information of the inspection department, upon uniform blanks furnished by said department, a record of all deaths and all injuries sustained by any employees in the pursuance of their regular occupations. These records shall be forwarded to the inspection department within one month from the time the accident occurs. [1917 c 36 § 72; RRS § 8707. Prior: 1891 c 81 § 15, part; 1887 c 21 § 7, part. Formerly RCW 78.38.520.]

78.40.306 Matters to be reported to inspector. In addition to the foregoing, immediate notice must be conveyed to the state inspection department by the management of the operating company interested: (1) Whenever a new mine is opened; (2) whenever it is intended to abandon any mine or to reopen an abandoned mine; (3) when the workings of any mine are approaching any abandoned mine believed to contain any accumulation of water or gas; (4) upon the accidental closing or abandonment of any regularly established passageway to an escapement outlet; (5) upon the occurrence of any serious fire within the same; (6) when any unusual amount of or accumulation of gas is encountered; (7) whenever any person is seriously burned by the ignition of explosive gas. [1917 c 36 § 73; RRS § 8708. Formerly RCW 78.38.540.]

State mine inspectors: RCW 43.22.130–43.22.250.

78.40.309 Superintendent acting as foreman. It shall be unlawful for the operator to have the superintendent to act as mine foreman, unless the superintendent holds a certificate of competency as a mine foreman issued by the state board of examiners. [1917 c 36 § 74; RRS § 8709. Formerly RCW 78.32.430.]

Certificates of competency: RCW 78.40.100–78.40.121.

78.40.312 Mine foreman to have certificate—Temporary mine foreman. It shall be unlawful for the operator of any mine to have in his service as mine foreman

any person who does not hold a certificate of competency as mine foreman issued by the state board of examiners. Anyone holding a first class certificate may serve as a mine foreman: *Provided*, That whenever an exigency arises by which it is impossible for any operator to secure the immediate services of a certificated mine foreman, he may employ any trustworthy and experienced man to act as temporary mine foreman for a period not to exceed thirty days, and in the event that no person possessing [possessing] a certificate of competency satisfactory to the mine superintendent can be found to fill the position, then the mine inspector may grant a temporary certificate to some person he may deem qualified, who may then fill the position until thirty days from and after the next meeting of the board of examiners held for the purpose of granting certificates. [1917 c 36 § 75; RRS § 8710. Formerly RCW 78.32.450, part.]

Certificates of competency: RCW 78.40.100–78.40.121.

78.40.315 Assistant mine foreman, fire boss, to have certificate—Temporary employment. It shall be unlawful for the operator of any mine to have in his employ as assistant mine foreman or fire boss any person who does not hold a first or second class certificate of competency issued by the board of examiners: *But, provided*, That whenever any exigency arises by which it is impossible for any operator to secure the immediate services of a certificated man, he may employ any trustworthy and experienced man for a period not exceeding thirty days, and in the event that no person possessing a certificate of competency satisfactory to the mine superintendent can be found to fill the position, then the mine inspector may grant a temporary certificate to some person he may deem qualified, who may then fill the position until thirty days from and after the next meeting of the board of examiners held for the purpose of granting certificates. [1917 c 36 § 76; RRS § 8711. Formerly RCW 78.32.450, part.]

Certificates of competency: RCW 78.40.100–78.40.121.

78.40.318 Foreman in charge underground—Exception. Underground operations shall be under the charge of a person holding a first class certificate under this chapter: *Provided, however*, That this section shall not apply to prospecting or exploring work where less than ten men are employed underground at any one time, unless the mine inspector, by written notice served on the management of such mine, requires such mine to be under the control of a certificated mine foreman. [1917 c 36 § 77; RRS § 8712. Formerly RCW 78.32.470.]

78.40.321 Notice of change of name of mine. The operator or superintendent of every mine shall, within thirty days, send notice to the mine inspector when any change occurs in the name of a mine, under the provisions of this chapter. [1917 c 36 § 78; RRS § 8713. Formerly RCW 78.38.550.]

78.40.324 Penalty for operating without a foreman. If any mine is worked for more than thirty days without a foreman as required by this chapter, the operator of such mine shall be guilty of a misdemeanor and liable to a penalty not exceeding fifty dollars for every day during which such mine is worked: *Provided, however*, That one foreman may act as foreman at more than one mine operated by the same company in the same camp. [1917 c 36 § 79; RRS § 8714. Formerly RCW 78.32.460.]

78.40.327 Boiler inspections—Report—Penalty. All boilers used for generating steam in and about coal mines must be inspected by a qualified person once in every six months, or oftener if required by the mine inspector. The result of such inspection shall be certified in writing to the mine inspector within thirty days thereafter, on [a] blank furnished by the mine inspection department.

Failure to make such reports shall constitute a misdemeanor. [1917 c 36 § 80; RRS § 8715. Prior: 1891 c 81 § 18, part; 1887 c 21 § 8, part. Formerly RCW 78.36.200.]

78.40.330 Safety devices on boilers. Every boiler must be equipped with water glasses, trycocks, steam gauge, safety valves and such other safety devices as may be required by law. All such devices must be kept in proper adjustment and their condition inspected and reported on in the same manner as provided for the boiler inspection. [1917 c 36 § 81; RRS § 8716. Prior: 1891 c 81 § 18, part; 1887 c 21 § 8, part. Formerly RCW 78.36.210.]

78.40.333 Permit to temporarily locate boiler nearer shaft. In the case of mines being developed where ten men or less are employed on one shift, the mine inspector shall, upon request of the operator, issue a written permit authorizing the placing temporarily of a boiler or boilers nearer than seventy-five feet to a shaft, slope or other opening. [1917 c 36 § 82; RRS § 8717. Formerly RCW 78.36.230.]

78.40.336 Testing safety devices. The engineer or fireman in charge of a boiler or boilers shall keep a constant watch over all safety devices and shall try same frequently to determine their proper adjustment. He shall immediately notify his employer of any defect. [1917 c 36 § 83; RRS § 8718. Formerly RCW 78.36.220.]

78.40.339 Washhouse for employees. Whenever sixty percent of the employees of a coal mine in this state shall petition the operator of such mine to provide a suitable washhouse for their use, free of cost to employees, such operator shall provide a suitable building which shall be convenient to the principal entrance to the mine or group of mines to be used as a washhouse, changing and drying room for the employees of the mine. Such building or washhouse to have sufficient floor space for the accommodation of miners or others using the same. The flooring in such washhouse to be of

concrete, tiling or cement, and the flooring in changing room to be optional with the owner as to the material used. Lockers or some other arrangements shall be put in the changing room for the use of employees using same, and shower baths shall be provided in the wash-room, one for each twenty men employed on one shift. The operator shall furnish an attendant to look after the operation, ventilation, drying of clothes, and sanitary conditions of the washhouse and changing rooms.

This section shall not apply to mines where less than twenty men are employed, or to mines under development which are not on a permanent operating basis. [1945 c 83 § 1; 1917 c 36 § 84; Rem. Supp. 1945 § 8719. Formerly RCW 78.34.220.]

78.40.342 Fire protection—Automatic sprinklers. At each and every coal mine in this state the owner or operator thereof shall, within three months after this chapter goes into effect, provide and maintain in good condition efficient means of protection against fire at the following places, to wit: Main entrance to hoisting shafts, slopes, permanent escapeways and ventilating fans on surface; also at all underground stables, pump rooms, hoists of more than fifty horsepower, and ventilating fans delivering more than ten thousand cubic feet of air per minute. Said means of fire protection shall consist of sufficient chemical extinguishers of approved type, or of proper hydrants, hose not less than one and one-half inch internal diameter, with suitable connections and nozzles, and pipe lines of not less than two inches internal diameter, to convey water at a pressure of not less than twenty-five pounds per square inch from an adequate supply of each of the aforementioned places.

At mines where open flame lamps are used at all main landings for a distance of two hundred feet from the shaft or slope in all stables, pump rooms, or hoist rooms that are timbered, or where timber is used in such quantities that a fire would be likely to spread, there shall be maintained two lines of automatic sprinklers on each side of the passageway attached to not less than one and one-half inch pipes connected with the fire fighting water supply, and such sprinklers shall not be more than ten feet apart.

All automatic sprinklers shall be of the fusible plug type and shall not require a temperature of more than one hundred and sixty-five degrees Fahrenheit to release the water. [1917 c 36 § 85; RRS § 8720. Formerly RCW 78.34.610.]

78.40.345 Timber for props. The owner or operator of any coal mine shall provide a sufficient supply of timber at any such mine where the same is required for use as props, so that the workmen may at all times be able to properly secure their working places, and it shall be the duty of the owner or operator to send down into the mine all such props, the same to be delivered at the entrance to the working place, or as may be agreed upon between the employees and the operator. [1917 c 36 § 86; RRS § 8721. Prior: 1891 c 81 § 10; 1887 c 21 § 17. Formerly RCW 78.34.620.]

78.40.348 Notice of lease or sale of a mine. Any mine owner transferring any coal mine shall immediately report such sale or lease to the mine inspector, giving the name or the names of the purchaser, purchasers, or lessee, and the address or addresses of the same. The purchaser, purchasers, or lessee of any such coal mine shall also immediately report to the mine inspector giving the names of the officers and superintendent of such coal mine, with their addresses. [1917 c 36 § 87; 1907 c 105 § 3; RRS § 8722. Formerly RCW 78.38.560.]

78.40.351 Accidents—Inquests—Investigations—Costs. Whenever by reason of any explosion or any other accident in or about any coal mine, whereby loss of life or serious injury has occurred, or is thought to have occurred, it shall be the duty of the person having charge of the mine to give notice thereof to the mine inspector by telephone or telegraph, and if any person is killed thereby, to the coroner of the county, who shall give due notice to the mine inspector if an inquest is to be held. In case of any major or fatal accident, the resident district officers of the miners' organization shall be notified by telephone or telegraph at the same time the mine inspector is notified, and shall have the privilege of appearing at all investigations held to determine the cause of such accident, and to recommend safety measures for the prevention of accidents. If the coroner shall determine to hold an inquest, the mine inspector shall be allowed to testify and offer such testimony as he shall deem necessary to thoroughly inform the said inquest of the cause of death, and the said inspector shall have authority at any time to appear before such coroner and jury and question or cross-question any witness, and in choosing a jury for the purpose of holding such inquest it shall be the duty of the coroner to impanel a jury, no one of whom shall be directly or indirectly interested. It shall be the duty of the mine inspector upon being notified as herein provided, to immediately repair to the scene of the accident and make such suggestions as may appear necessary to secure the safety of the men, and if the results of the explosion or accident do not require an investigation by the coroner, he shall proceed to investigate and ascertain the cause of the explosion or accident, and make a record thereof, which he shall file as provided for, and to enable him to make the investigation he shall have the power to compel the attendance of persons to testify, and administer oaths or affirmations. The cost of such investigation shall be paid by the county in which the accident occurred, in the same manner as costs of inquests held by coroners or justices of the peace are paid, and copies of evidence taken at inquests shall be furnished the mine inspector. [1939 c 51 § 2; 1917 c 36 § 88; RRS § 8723. Prior: 1891 c 81 § 15; 1887 c 21 § 9. Formerly RCW 78.38.530.]

78.40.354 Certain steampipes to be insulated. No steampipes, through which high pressure steam is conveyed for the purpose of driving pumps or other machinery, shall be laid on traveling or haulage ways,

unless they are encased in asbestos or some other suitable material, or so placed that the radiation of heat into the atmosphere of the mine will be prevented as far as possible. [1917 c 36 § 89; RRS § 8724. Formerly RCW 78.34.630.]

78.40.357 Internal combustion engines prohibited—Penalty. When a steam locomotive is used for the purpose of hauling coal out of a mine, the tunnel or tunnels through which the locomotive passes shall be properly ventilated and kept free as far as practicable of noxious gases. The use of steam locomotives shall be prohibited in any mines opened in the state after the passage of this chapter, or in mines already opened that are not now using the same.

The use of mining locomotives, pumping engines, hoists, trucks, or any other form of machinery driven or propelled by internal combustion engines, in which power is generated by burning within the cylinder or cylinders, a mixture of air and gas, or air and alcohol, gasoline, fuel oil, oil distillate, or other liquid fuel, within any coal mine or mines, is hereby declared to be unlawful, and any person or persons, body corporate, agent, manager or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor. [1943 c 211 § 4; 1917 c 36 § 90; Rem. Supp. 1943 § 8725. Formerly RCW 78.34.640.]

78.40.360 Precautions against explosions of dust. In any mine or part of mine where, from the nature of the coal or method of handling the same, an undue quantity of dust is produced either on the roadways or in the working places, which may tend to cause danger of explosion, then all the haulage ways leading thereto and all the haulage roads and working places in such section of the mine, shall be thoroughly and effectively watered by some recognized and approved system of watering, or other treatment equivalent to watering. If, in the opinion of the inspector, an undue quantity of dust is produced and the method employed is not adequate or effective, he may notify the manager in writing and proceed as provided for in *section 9, article II of this act: *Provided, however,* That the provisions of this section shall not apply to any mine or separate split or panel of such mine if no explosives are permitted and safety lamps are used in such separate part of a mine, unless in the opinion of the inspector this exemption would be dangerous to the persons employed in such section or part of the mine. [1917 c 36 § 91; RRS § 8726. Formerly RCW 78.34.650.]

**Reviser's note:* "section 9, article II of this act" (1917 c 36 § 9) is codified in RCW 43.22.210.

78.40.363 Stables in mines—Storage of hay or straw—Lining of pump rooms. It shall not be lawful to provide a horse or mule stable in any mine unless the same is excavated in solid rock, or built, or thoroughly lined with a fireproof material; and all openings to such stables shall be equipped with fireproof doors, free from all obstruction, which can be closed in case of fire.

No hay or straw shall be taken into any mine unless pressed and made up into compact bales, which shall be

kept in a storehouse built apart from the stable and in the same manner as the stable. Under no circumstances shall the hay or straw be stored in the stable.

All permanent underground pump rooms must be thoroughly lined with fireproof material, unless the same are excavated in solid rock. [1917 c 36 § 92; RRS § 8727. Formerly RCW 78.34.660.]

78.40.366 Weight before screening when ton rate employment. It shall be unlawful for any mine owner, lessee or operator of coal mines in the state of Washington, employing miners at ton rates, to pass the output of coal mined by said miners over any screen or other device which will take any part from the value thereof before the same shall have been duly weighed and credited to the employee sending the same to the surface, and accounted for at the legal rate of weights as fixed by the laws of the state of Washington. [1917 c 36 § 93; RRS § 8728. Prior: 1891 c 161 § 1. Formerly RCW 78.32.040.]

78.40.369 Escape shafts, equipment—Signboards. All escapement shafts or slopes over thirty degrees pitch shall be equipped with stairways or ladders having landing places or platforms at reasonable distances apart or, in lieu thereof, such hoisting apparatus as will enable the employees in the mine to make safe and speedy exit in case of danger. At all points where the passageway to the escapement shaft and other places of exit is intersected by other roadways or entries, conspicuous signboards, subject to the approval of the mine inspector, shall be placed indicating the direction it is necessary to take in order to reach such place of exit. [1917 c 36 § 94; RRS § 8729. Prior: 1909 c 117 § 3; 1907 c 105 § 1, part; 1891 c 81 § 3; 1887 c 21 § 3, part. Formerly RCW 78.34.720.]

78.40.372 Width of barrier pillars—Penalty. The operator of every coal mine shall leave barrier pillars at least fifty feet in width along the line of the property he operates; failure to do so shall constitute a gross misdemeanor and he shall be subject to a fine of not less than five hundred dollars nor more than one thousand dollars, or imprisonment of not less than six months: *Provided, however,* That nothing herein shall be construed as forbidding owners or operators of adjacent properties from extracting all the coal after they have agreed that same might be done. [1917 c 36 § 95; RRS § 8730. Formerly RCW 78.34.670.]

78.40.375 Operator's reports, annual and monthly—Contents—Penalty. On or before the twenty-fifth day of January in each year, the operator or superintendent of every mine shall send to the office of the state mine inspector a correct report specifying with respect to the year ending the thirty-first of December preceding, containing the following:

Name of company -----
 Post office address -----
 OFFICERS Name Address
 President -----
 Manager -----

- General superintendent -----
- Mining engineer -----
- Superintendent -----
- General foreman -----
- Outside foreman -----
- Inside mine foreman -----
- Location of mine -----
- On what railroad -----
- Principal market -----
- Average value of coal per short ton at mine -----
- Average value of coke per short ton at mine -----
- Price paid per gross ton for mining -----
- Are wages paid monthly or semimonthly -----
- Number of feet of gangway or entry driven -----
- Also number of feet of slope or shaft driven or sunk during year -----
- Scale of wages paid above ground -----
- Scale of wages paid underground in the different classes -----
- A report of ventilating and other important machinery installed during the year.
- A report of new openings.
- On or before the fifteenth day of each month, the operator or superintendent shall also furnish the state mine inspector with a monthly report relative to the month preceding, containing the following information:
- Name of company -----
- Name or number of mine -----
- Location of mine -----
- County -----

REPORT IN SHORT TONS

- No. tons of coal shipped -----
- No. sold to employees and local trade -----
- No. used for power -----
- No. charged into ovens for coke -----
- Total production of coal -----
- Total production of coke -----
- No. days operated -----
- No. inside employees -----
- No. outside employees -----
- No. killed -----
- No. injured -----
- No. widows -----
- No. orphans -----

The operator or the superintendent who fails to comply with the provisions of this section shall be deemed guilty of a misdemeanor. [1943 c 211 § 5; 1917 c 36 § 96; Rem. Supp. 1943 § 8731. Formerly RCW 78.38.570 and 78.38.580.]

78.40.378 Shelter holes on haulage roads. The operator shall provide that all mechanical haulage roads, driven after this chapter takes effect, where separate traveling ways are not maintained, where general clearance is less than two and one-half feet on one side shall be provided with shelter holes not more than sixty feet

apart, giving clearance not less than three feet wide and four feet high along the road. They shall be kept white-washed. [1917 c 36 § 97; RRS § 8732. Formerly RCW 78.34.680.]

78.40.381 Safeguarding personnel from machinery, stairs, etc. All machinery used in or about any mine that when in motion would be dangerous to persons coming in contact therewith, such as engines, wheels, screens, shafting, gears and belting, shall be guarded by covering or railing to prevent persons from walking or falling against same. All sides of stairs, trestles and platforms around mines shall be provided with hand and guard railing to prevent persons from falling over the sides. [1917 c 36 § 98; RRS § 8733. Formerly RCW 78.34.690.]

ARTICLE IX DUTIES OF OFFICIALS

78.40.390 Superintendent to see laws are observed. The superintendent shall, at least once every week, read, examine carefully and countersign all reports entered in the mine record book by the mine foreman, and if he finds on such examination that the law is being violated in any particular, he shall order the mine foreman to stop such violation forthwith, and shall see that his order is complied with. [1917 c 36 § 99; RRS § 8734. Formerly RCW 78.32.400.]

78.40.393 Superintendent, duties as to other officials. The superintendent shall not obstruct the mine foreman or other officials in the fulfillment of any of their duties, as required by this chapter, but he shall direct that the mine foreman and all other employees under him comply with the law in all its provisions. [1917 c 36 § 100; RRS § 8735. Formerly RCW 78.32.410.]

78.40.396 Superintendent or assistant to visit working places. It shall be the duty of every mine superintendent to visit, or to have his assistant superintendent visit every working place in every mine under his charge once every sixty days: *Provided*, That the mine foreman shall not be considered as the assistant to the superintendent for this purpose. [1917 c 36 § 101; RRS § 8736. Formerly RCW 78.32.420.]

78.40.399 Operator's duties—Posting rules and notices. The operator shall keep on hand at the mine a supply of the printed rules and notices and record books required by this chapter. He shall see that the rules and notices are posted in conspicuous places at or near the entrance to the mine and kept in such condition that they will always be legible. [1917 c 36 § 102; RRS § 8737. Prior: 1891 c 81 § 20. Formerly RCW 78.38.500.]

78.40.402 Foreman—Duties as to interior of mines. The mine foreman shall keep a careful watch over the ventilating apparatus, the ventilation, airways, traveling ways, timbering and drainage, and shall see that all stoppings along the airways are properly built. He shall also see that the proper crosscuts or breakthroughs are

made in the pillars of all chutes, breasts, rooms, gangways, entries and levels, in accordance with this chapter, and that they are closed when necessary so that the ventilating current can be conducted in sufficient quantities through the last crosscut or breakthrough and to the working places by means of brattices or other devices, and all other duties pertaining to the safety of the men, as provided for in this chapter. [1917 c 36 § 103; RRS § 8738. Formerly RCW 78.32.480.]

78.40.405 Foreman—Duties as to men in mines. The mine foreman shall have charge of all inside workings and of the persons employed therein, in order that all of the provisions of this chapter as far as they relate to his duties concerning the safety of the mine and the persons employed therein be complied with, and the regulations prescribed for each class of workmen under his charge be carried out in the strictest manner possible. [1917 c 36 § 104; RRS § 8739. Formerly RCW 78.32.490.]

78.40.408 Foreman—Records. The mine foreman shall each day write and sign with ink in a book provided for that purpose, a report of the general condition of the mine, which report shall clearly state any unusual danger that may have come under his observation during the day, or any unusual danger reported to him by his assistants, or by the fire bosses. The report shall also state the manner in which the requirements of the law are not complied with.

He, or his assistant, shall also once each week enter plainly with ink in said book a true report of all air measurements required by this chapter, designating the place, the area of each breakthrough and entry separately, the velocity of the air in each breakthrough and entry, and the number of men employed in each separate split of air, with the date when measurements were taken. Said book shall at all times be kept in the main office at the mine for examination by the inspector and by any persons working in the mine. Such examinations made by others than inspectors shall be in the presence of the superintendent or mine foreman.

The mine foreman shall also each day read carefully and countersign in ink all reports entered in the fire bosses' book. [1917 c 36 § 105; RRS § 8740. Formerly RCW 78.32.500.]

78.40.411 Foreman—Duty to drill men on means of escape. In order that men may familiarize themselves with escapements to be used in case of accidents, it shall be the duty of the mine foreman to cause all miners and other underground employees to walk or climb to or from their working places to the surface by way of one of the traveling ways, escapements, or outlets, at least once every six months. [1917 c 36 § 106; RRS § 8741. Formerly RCW 78.32.530.]

78.40.414 Foreman—Duties as to ventilation. When operations are temporarily suspended in a mine, the mine foreman shall see that a danger sign is placed across the mine entrance, which sign shall be sufficient

warning for persons not to enter the mine. If the circulation of air through the mine be stopped, each entrance to said mine shall be fenced off in such manner as will ordinarily prevent persons from entering said mine, and a danger sign shall be displayed upon said fence at each entrance. The mine foreman shall see that all danger signs used at the mine are in good condition, and if they become defective he shall cause same to be repaired, or notify the superintendent.

In case of accident to a ventilating fan or its machinery whereby the ventilation in a mine is, or is about to be seriously interrupted, the mine foreman shall order the men to withdraw immediately from the mine, and he shall not allow them to return to their work until the ventilation has been restored and the mine has been thoroughly examined by him, or by an assistant mine foreman or fire boss, and reported safe.

In case the operation of the ventilating fan is stopped at a gaseous mine because of the suspension of the operations in the mine, the mine foreman shall not allow the men employed therein to enter the mine until the ventilation has been restored by the operation of the fan for at least twelve hours and the mine has been thoroughly examined by him, or by an assistant mine foreman or fire boss, and reported safe. [1919 c 201 § 5; 1917 c 36 § 107; RRS § 8742. Prior: 1897 c 45 § 8. Formerly RCW 78.32.520.]

78.40.417 Foreman—Weekly examination of mine. Whenever any dangerous condition is known to exist, or is reported by others to the mine foreman, he shall give prompt attention to its removal, and in case it is impracticable to remove the danger at once, he shall post danger signs warning every person whose safety is menaced thereby, to remain away from the place that the dangerous conditions affect. He or his assistant shall once each week travel and examine all the air courses and traveling ways, and in addition all the openings that give access to old workings or falls. He shall record and sign in ink in a book provided for that purpose the results of these weekly examinations. [1943 c 211 § 6; 1917 c 36 § 108; Rem. Supp. 1943 § 8743. Formerly RCW 78.32.510.]

78.40.420 Foreman—Precautions against gas and water. In any working place that is being driven within supposedly dangerous proximity to an abandoned mine suspected of containing explosive gases, or that may contain a dangerous accumulation of water, the mine foreman shall see that at least one bore hole shall be maintained not less than twenty feet in advance of the face; and in a seam of coal on either side of the bore hole, flank holes shall be driven not less than twelve feet in advance, and any place driven to tap water or gas shall not be more than eight feet wide. [1917 c 36 § 109; RRS § 8744. Prior: 1891 c 81 § 14; 1887 c 21 § 5. Formerly RCW 78.32.540.]

78.40.423 Foreman—Duty to check fire bosses. The mine foreman shall see as often as practicable that the fire boss has left his mark, as required by this chapter, in places examined or reported examined. [1917 c 36 § 110; RRS § 8745. Formerly RCW 78.32.560.]

78.40.426 Foreman—Duty to visit working places. The mine foreman, his assistant, or fire boss, shall visit each working place once each shift while the employees are at work, and in addition thereto shall give special care, oversight and attention to the men drawing pillars. [1917 c 36 § 111; RRS § 8746. Formerly RCW 78.32.570.]

78.40.429 Foreman—Duties in case of accidents. It shall be the duty of the mine foreman, or his assistant, in case of injury to employees while at work in the mine, to at once visit the scene of the accident, see that the injured person or persons are given all the aid that can possibly be given which will add to their comfort and safety. After being treated with all the skill known to the foreman or his assistant, the injured person or persons shall be carefully wrapped up and taken to their homes or the hospital. [1917 c 36 § 112; RRS § 8747. Formerly RCW 78.32.550.]

78.40.432 Fire boss—Duties in general. It shall be the duty of the fire boss to examine carefully not more than three hours before a first shift enters the mine, every working place in his charge in which men have not been employed at the working face within ninety minutes previous to the starting time of such shift all open places adjacent to live workings, and every unfenced road to abandoned workings. He shall see that the air current is traveling in its proper course. In making the examination he shall use no other than an approved safety lamp. The fire boss shall examine for all dangers in all portions of the mine under his charge, and after each examination he shall leave at or near the working face of every place examined the date of the examination as evidence that he has performed his duty. [1917 c 36 § 113; RRS § 8748. Formerly RCW 78.32.590.]

78.40.435 Fire boss—Danger signs. At the entrance to and in crosscuts or breakthroughs to any working place where explosive gas is discovered or where there is immediate danger found to exist from any other cause, the fire boss shall place a danger sign, which shall be sufficient warning for persons not to enter.

The danger sign shall consist of a lagging, board or piece of timber, or other obstruction, placed across the entrance to the working place, and in crosscuts and breakthroughs open to such working place, so that it is distinctly visible and marked plainly showing that danger exists beyond. [1917 c 36 § 114; RRS § 8749. Formerly RCW 78.32.600.]

78.40.438 Fire boss—Record of inspections—Procedure upon report of gas. Each fire boss shall, immediately after making his inspection and before the employees are allowed to enter the mine, report on a

bulletin board provided for that purpose at the entrance to the mine, a true record of such inspection, designating each place where gas is found, also that all other places are clear. A like report of such inspection shall immediately be made by the fire boss, with ink, in a book kept for that purpose at the mine office on the surface, and in addition shall set forth the time of the inspection, the reason for the presence of any danger found, the means taken and by whom for the removal of same. If explosive gas is found the report shall show as near as possible the amount found, and time the place was clear. The fire bosses' record shall, at all times, be accessible to the mine inspector or his deputy, and to the employees of the mine in the presence of a mine official. The fire boss, mine foreman, or his assistant must reexamine all places in which gas is reported in advance of employees working in such places. After making such examination he shall personally direct the removal of said gas or other danger. Gas shall not be removed by brushing. [1917 c 36 § 115; RRS § 8750. Formerly RCW 78.32.610.]

78.40.441 Shot firers—Reports. In all parts of a mine where explosive gas is being generated, or dust exists in such quantities as to be dangerous or liable to cause an explosion from blowout or windy shots, there shall be employed a sufficient number of competent persons to act as shot firers, whose duty it shall be to fire all shots properly placed by the miners, and refuse to fire any shots improperly placed. No blasts in such part of a mine shall be fired by any other person than a shot firer, fire boss or foreman. Incombustible material for tamping must be used for that purpose, and the mine foreman shall supply same at convenient places inside the mine. Under no circumstances shall coal dust or any other combustible material be used for tamping. Each shot firer shall report to the fire boss, mine foreman, or his assistant, every shot that he has refused to fire, every blown out shot, and every shot that has missed fire, and a record shall be kept of same. [1917 c 36 § 116; RRS § 8751. Formerly RCW 78.38.270 and 78.38.350, part.]

78.40.444 Shot firing—Restrictions on. No shot firer or any other person shall fire a shot in any working place if he can detect explosive gas in the place. In dusty mines no shot shall be fired unless the place in which the shot is to be fired is thoroughly wetted or otherwise treated to prevent the existence of any dust for a distance of not less than one hundred feet from the shot to be fired.

When the presence of coal dust is likely to enter into an explosion hazard, the chief mine inspector may require that the dry area be thoroughly rock dusted to the extent that the incombustible content shall be at least seventy percent.

In all advancing entries, counters and haulage inclines where an undue quantity of dry coal dust is present, the chief mine inspector may require that the rock dusting shall be kept within one hundred feet of the working face. The rock dust shall be of such material as will meet the requirements of the U.S. bureau of

mines in exclusion of deleterious substances. [1943 c 211 § 7; 1917 c 36 § 117; Rem. Supp. 1943 § 8752. Formerly RCW 78.38.330.]

ARTICLE X MINE RESCUE EQUIPMENT

78.40.450 Rescue apparatus and supplies—Reports on. Within one year after this chapter goes into effect, every coal mine employing as many as twenty underground men, shall have and maintain ready for use at all times, at least three sets of mine rescue apparatus, and one reviving device, of a type approved by the U.S. bureau of mines.

For each one hundred underground men in addition to the first twenty, one additional apparatus shall be maintained, up to six sets.

At every coal mine where mine rescue equipment is maintained, supplies for same shall be kept on hand to last at least twenty-four hours. The superintendent of the mine, or some person designated by him for that purpose, shall examine each apparatus once each month and report the condition of same, also the amount of supplies on hand at the time of such examination. This report shall be made in writing by the person making the examination and a record of same shall be kept at the mine office and shall be accessible to the mine inspector or his deputy at all times.

Whenever two or more coal mines are operated by the same company within a radius of twenty miles, they shall be considered as one mine. However, mines within a radius of twenty miles and connected by a wagon road or railroad, may agree to equip and maintain one central station at which there shall not be less than six apparatuses and one reviving device; when more than four mines are associated at one central station, an additional machine must be added: *Provided, however,* That any coal mining operation within fifty miles of a properly equipped and maintained U.S. bureau of mines rescue station, in lieu of the provisions of this section, shall be required to furnish such personnel as the bureau of mines or the state mine inspector may require for adequate training in mine rescue and first aid work, the cost of the training of said personnel to be borne by the mine operator. [1947 c 166 § 4; 1943 c 211 § 8; 1917 c 36 § 118; Rem. Supp. 1947 § 8753. Formerly RCW 78.34.450.]

Reviser's note: "this chapter goes into effect": "this act" used in session law language is changed to "this chapter"; the phrase was first used in the 1917 act, which took effect at midnight, June 6, 1917. The 1947 amendatory act took effect at midnight, June 11, 1947.

78.40.453 Stretchers required—Use. The operator or superintendent of every mine employing from five to fifty persons, shall provide and keep in good condition near the principal entrance to the mine, one stretcher. When more than fifty persons are employed, they shall keep at least two stretchers. These stretchers shall be used for conveying to his abode, or to the hospital if necessary, any person who may be injured while in the discharge of his duties. [1917 c 36 § 119; RRS § 8754. Prior: 1891 c 81 § 13. Formerly RCW 78.34.460, part.]

78.40.456 Woolen blankets required. Suitable woolen blankets shall be kept on hand for each stretcher. [1917 c 36 § 120; RRS § 8755. Formerly RCW 78.34.460, part.]

78.40.459 Medical supplies required. At all times there shall be provided bandages, splints, and other medical supplies, to render first aid and relief to employees who may be injured. These supplies shall be kept in a suitable room near the entrance to the mine. [1917 c 36 § 121; RRS § 8756. Formerly RCW 78.34.480.]

78.40.462 First aid kits—Penalties. At each working level, or entry, of every mine in this state, the operating company shall maintain a box of first aid supplies equivalent to the American Red Cross (industrial) first aid box. If these boxes are kept locked, the keys shall always be near at hand and plainly visible. Such keys may be kept under glass as a fire alarm box key is kept. Additional keys may be given to employees selected by the mine foreman on each level or working section of the mine. The foreman shall keep a list of those who have keys in their possession posted on the (industrial) first aid box nearest their working places. In addition to the above first aid boxes, the operating company of each mine shall furnish each driver or motorman with a metallic covered packet equivalent to those sold by the American Red Cross. At all times when they are underground or at their respective places of employment, said drivers or motormen shall have the metallic packets in their possession. Failure of the operator to provide the supplies required by this section shall constitute a misdemeanor. Any person destroying or stealing any of the first aid supplies shall be guilty of a misdemeanor. [1917 c 36 § 122; RRS § 8757. Formerly RCW 78.34.490.]

ARTICLE XI POWDER AND EXPLOSIVES

78.40.470 Explosives, how and where to be kept. Every person who has powder or other explosives in a mine shall keep the same in a proper, closed receptacle. Said receptacle shall be kept as far as practicable from the track or chute; and all powder receptacles shall be kept as far as practicable from each other, and each in a secluded place. Detonators shall at all times be kept in securely closed cases, separate and apart from other explosives, until required for use. [1917 c 36 § 123; RRS § 8758. Formerly RCW 78.38.200.]

Storage of explosives—Issuance to workmen: RCW 78.40.488.

78.40.473 Use of lamps and lighted pipes near explosives—Opening receptacles. Whenever a workman using an open light is about to open a receptacle containing explosives, and while handling the explosives, he shall place and keep his lamp at least five feet distant from said explosive and in such position that the air currents cannot convey sparks to it, and at such time no person shall approach nearer than five feet to any explosive with an open lamp, lighted pipe, or anything containing fire, except safety lamps, unless such

explosive is contained in a proper closed receptacle. No miner, workman, or other person shall open any receptacle containing an explosive except in the manner prescribed by the manufacturer thereof, and it shall be unlawful for any person to have in his possession in any mine any receptacle containing explosives which has been opened in violation of this chapter. [1917 c 36 § 124; RRS § 8759. Formerly RCW 78.38.210 and 78.38.220, part.]

Limitations on storage and handling of explosives: RCW 78.40.651.
Precautions in handling explosives: RCW 78.40.675.

78.40.476 High explosives. No high explosive shall be stored in any mine and no more shall be taken into any mine at any one time, by any person, than is required in one shift. The quantity used shall be subject to the approval of the mine inspector. [1917 c 36 § 125; RRS § 8760. Formerly RCW 78.38.230.]

Quantity of explosives allowed in mine: RCW 78.40.648.
Storage of explosives—Issuance to workmen: RCW 78.40.488.

78.40.479 Firing dependent shots—Permit. No person shall fire a dependent shot in the coal as herein-after defined. A dependent shot is a shot dependent on another shot so placed as to make an opening sufficient for the dependent shot to do its work properly. At mines where solid shooting is allowed the opening shot shall be fired first and no dependent shot shall be fired at that time. In no case shall more than one kind of explosive be used in the same drill hole: *Provided*, That in any mine where the coal bed worked is less than three feet between walls and no gas or dust is present, where it can be shown to the satisfaction of the mine inspector that the above rule would prohibit the operating company to mine the coal at a profit, the mine inspector may grant him a permit to suit his conditions. [1917 c 36 § 126; RRS § 8761. Formerly RCW 78.38.310.]

78.40.482 Black powder, how handled. Black powder for use in mines shall be put up in metallic cans or canisters, or receptacles of equally safe material. No black powder, high explosive, or detonators shall be hauled on any electric motor trip in any mine, unless the same are encased in nonconductive boxes or receptacles: *Provided*, That they may be hauled in nonconductive car.

No black powder, other than that taken by each man for his own use, shall be hauled on man trips. [1917 c 36 § 127; RRS § 8762. Formerly RCW 78.38.260.]

78.40.485 Needles and tamping bars—Depth of holes—Unconfined shots—Penalty. The needle used in preparing a blast of black powder shall be made of copper, and the tamping bar shall be tipped with at least five inches of solid copper. All other explosives where a cap or detonator is used for the purpose of exploding the blast, shall be tamped with a wooden tamping bar. In no case shall iron or steel or other metal that is liable to cause a spark while tamping, be used for the purpose of tamping any explosive. Neither shall a scraper be used for tamping. It shall be unlawful for any person to have in his possession in the mine

underground, any iron or steel needle or tamping bar not tipped as above required.

No hole shall be drilled more than six feet in depth for the purpose of blasting: *Provided, however*, That where mining machines are used holes may be drilled to the depth of the cut.

Bulldozing, mudcapping, or other unconfined shots shall not be fired in any coal mine, excepting and provided the confronting situation is such that it cannot safely be overcome by any other method. In such case, and then only in the interests of safe practice may such a shot or shots be placed, and the area within fifty feet thereof shall be thoroughly wetted down or rock dusted before firing, and the shot or shots be packed or heavily capped with rock dust.

Any violation of this section shall be a misdemeanor and the offender shall be punished under the provisions of this chapter. [1943 c 211 § 9; 1917 c 36 § 128; Rem. Supp. 1943 § 8763. Prior: 1887 c 21 § 19. Formerly RCW 78.38.280.]

Blasting holes: RCW 78.40.681.

Types of tamping bars for blasting enumerated: RCW 78.40.678.

78.40.488 Storage of explosives—Issuance to workmen—Penalty. Each person, firm or corporation, engaged in coal mining, requiring the use of powder or other explosives, shall provide (subject to the approval of the mine inspector) at or near the entrance of each coal mine operated, at some suitable place near such work, a suitable distributing magazine for the storage of such powder or other explosives. There shall be posted upon such magazine a notice printed in letters not less than three inches in height, that such magazine contains explosives. No person shall store or keep in any magazine mentioned in this section, any powder or other explosive in excess of one ton. Such powder or other explosives shall be issued daily in quantities not to exceed the amount used by each workman in one shift, in proper receptacles. Any miner taking powder into the mine and having to return the same on account of not being able to work, may return the same to the operator and the operator shall receive it. Any person or corporation violating or failing to comply with the provisions of this section shall be guilty of a misdemeanor. [1917 c 36 § 129; RRS § 8764. Prior: 1911 c 65 § 1. Formerly RCW 78.38.240.]

Explosives, how and where to be kept: RCW 78.40.470.

Limitations on storage and handling of explosives: RCW 78.40.651.

ARTICLE XII SAFETY LAMPS

78.40.500 Safety lamps—Type—Examination. In every working of a coal mine approaching any place where there is likely to be an accumulation of explosive gases, or in any working place where there is imminent danger from explosive gases, no light or lamp other than a magnetic locked safety lamp or electric lamp shall be allowed or used, except by superintendents, shot lighters or other certified men, who may use such lamps as may be approved by the mine inspector.

Whenever safety lamps are required in any mine they shall be the property of the owner of said mine, and a competent person who shall be appointed for that purpose shall examine every safety lamp immediately before it is taken into the workings for use and ascertain it to be clean, safe and securely locked; and safety lamps shall not be used until they have been examined and found safe, clean and securely locked. [1917 c 36 § 131; RRS § 8766. Prior: 1909 c 57 § 1. Formerly RCW 78.36.010.]

Prerequisite to entrusting lamps to workmen: RCW 78.40.657.

Unauthorized possession of keys to safety lamps—Prosecution: RCW 78.40.660.

78.40.503 Safety lamps—Open lights prohibited, when. At mines where the danger from explosive gas requires the use of safety lamps, no open lights shall be used in that part or district of the mine where safety lamps are in use. [1917 c 36 § 132; RRS § 8767. Formerly RCW 78.36.020.]

78.40.506 Safety lamps—Tampering with lamps or using other lighting devices—Penalty. In any mine where locked safety lamps are used, any person other than those authorized by this chapter, opening or tampering with one of said safety lamps, or found with matches or any lighting device other than safety lamps, shall be guilty of a misdemeanor and upon conviction thereof he shall be fined not less than fifty dollars nor more than two hundred dollars, or imprisonment for a term of not more than one year: *Provided, however,* This shall not prohibit the use of any flame used in making repairs to any machinery or wires when such repairs are made on the intake air. [1917 c 36 § 133; RRS § 8768. Prior: 1909 c 57 § 3, part. Formerly RCW 78.36.040.]

78.40.509 Safety lamps—Penalty. For the violation of any provisions of RCW 78.40.500 and 78.40.503, the operator or employee of any mine shall be deemed guilty of a misdemeanor, and upon conviction thereof may be fined in any sum not less than fifty dollars nor more than two hundred dollars, and in addition thereto the mine inspector shall have authority and it shall be his duty to close such mine until the provisions of this chapter shall be complied with. [1917 c 36 § 134; RRS § 8769. Prior: 1909 c 57 § 3, part. Formerly RCW 78.36.030.]

78.40.512 Safety lamps—Appeal—Number of lamps. The operator of any mine may appeal to the mining board when in his judgment the order of the mine inspector to place a mine on safety lamps is unreasonable. The decision of the board shall be final.

At every mine in this state the operator shall provide and maintain in condition for use, not less than four approved safety lamps. [1917 c 36 § 135; RRS § 8770. Formerly RCW 78.36.050.]

ARTICLE XIII SHAFT SINKING

78.40.515 Shaft driving to be open to inspection. Any shaft or other opening in process of opening or driving for the purpose of mining coal shall be subject to the inspection of the mine inspector. [1917 c 36 § 136; RRS § 8771. Formerly RCW 78.38.020.]

78.40.518 Precautions against falling material. Over every shaft that is being sunk, or that shall hereafter be sunk, there shall be a safe and substantial structure erected to support the sheaves or pulleys at a height of not less than twenty-five feet above the tipping place. The landing platform of such shaft shall be so arranged that material cannot fall down the shaft while the bucket is being emptied or taken from the hoisting rope. If provisions are made to land the bucket on a truck, said truck and platform shall be so arranged that material cannot fall into the shaft. [1917 c 36 § 137; RRS § 8772. Formerly RCW 78.38.030.]

78.40.521 Hoisting methods. Rock or coal shall not be hoisted except in a bucket or on a cage when men are in the bottom of a shaft, and said bucket or cage must be connected to the hoisting rope by a safety hook or clevis or other safety attachment, and said bucket shall be so arranged that there will be no danger of its tipping over while the bucket is being hoisted or lowered. The rope shall be fastened to the side of the drum, and not less than three coils of rope shall always remain on the drum. In shafts over one hundred feet in depth, such shafts shall be provided with guides and guide attachments applied in such manner as to prevent the bucket from swinging while descending or ascending, and such guide or guide attachments shall be maintained at a distance of not more than seventy-five feet from the bottom of such shaft, until its sinking shall have been completed. [1917 c 36 § 138; RRS § 8773. Formerly RCW 78.36.900.]

78.40.524 Shaft platforms. Whenever persons are employed on platforms in shafts the person in charge must see that said platforms are properly and safely constructed and secured. [1917 c 36 § 139; RRS § 8774. Formerly RCW 78.38.040.]

78.40.527 Shaft levels to be made safe. Where the strata are not safe, every shaft level shall be securely cased, lined, or otherwise made secure, and the person in charge shall see that all loose rock or other material on the sides of the shaft, or on the timber in the shaft, shall not be allowed to remain on said timber or sides of the shaft after each blast. [1917 c 36 § 140; RRS § 8775. Formerly RCW 78.38.050.]

78.40.530 Precaution when gas in shaft—Blasting in shaft sinking. Where explosive gas is encountered in sinking shafts, the person in charge shall see that the shaft is examined before each shift of men enters to work and before the men descend after each blast. All blasts in shaft sinking shall be exploded by an electric

battery placed on the surface. [1917 c 36 § 141; RRS § 8776. Formerly RCW 78.38.060.]

78.40.533 Ventilating shafts while being sunk. Provision shall be made for the proper ventilation of shafts while they are being sunk. [1917 c 36 § 142; RRS § 8777. Formerly RCW 78.38.070.]

78.40.536 Restrictions on riding buckets. Not more than four persons shall be hoisted or lowered in or on a bucket in a shaft at one time, and no person shall ride on a loaded bucket. [1917 c 36 § 143; RRS § 8778. Prior: 1891 c 81 § 19, part; 1887 c 21 § 7, part. Formerly RCW 78.36.880, part.]

Human capacity of cages—Attendant: RCW 78.40.287.

Men and materials not to be hoisted together: RCW 78.40.284.

ARTICLE XIV RULES FOR THE INSTALLATION OF ELECTRICITY

78.40.540 Compliance with rules—Definitions. The operator, superintendent, or mine foreman in charge of any coal mine in which electricity is used as a means of power, shall, within six months after the passage of this chapter, comply with the following rules:

DEFINITIONS

Potential: The terms "potential" and "voltage" are synonymous and mean electrical pressure.

Difference of potential: The expression "difference of potential" means the difference of electrical pressure existing between any two points of an electrical system, or between any point of such system and the earth, as determined by a volt meter.

Potential of a circuit: The potential or voltage of a circuit, machine, or any piece of electrical apparatus, is the potential normally existing between the conductors of such circuit or the terminals of such machine or apparatus.

(1) Where the conditions of the supply of electricity are such that the difference in potential between any points of the circuit does not exceed three hundred volts, the supply shall be deemed a low voltage supply.

(2) Where the conditions of the supply of electricity are such that the difference in the potential between any two points in the circuit may at any time exceed three hundred volts, but does not exceed six hundred volts, the supply shall be deemed a medium voltage supply.

(3) Where the conditions of the supply of electricity are such that the difference of potential between any two points in the circuit exceeds six hundred volts, the supply shall be deemed a high voltage supply.

Grounding: Grounding any part of an electric system shall consist in so connecting such part to the earth that there shall be no difference of potential between them.

Underground station: An underground station is herein considered as any place where electrical machinery is permanently installed. [1917 c 36 § 144; RRS § 8779. Formerly RCW 78.36.600.]

78.40.543 Grounding. All metallic coverings, armoring of cables other than trailing cables, and, where installed underground, the frames and bed-plates of generators, transformers and motors, other than low voltage portable motors, shall be efficiently grounded, as shall also the neutral wire of three wire continuous current systems. [1917 c 36 § 145; RRS § 8780. Formerly RCW 78.36.610.]

78.40.546 Voltage underground—Installations—Danger signs. No higher voltage than medium voltage shall be used underground, except for transmission or for application to transformers, or other apparatus, in which the whole of the high voltage circuit is stationary.

In gaseous mines, high voltage transmission cables shall be installed in the intake airways only, and high voltage transformers shall be installed only in suitable chambers ventilated by the intake air which has not passed through or by a gaseous district.

All high voltage machines, apparatus, and lines shall be so marked as to clearly indicate that they are dangerous by the use of the word "danger" placed at frequent intervals. [1917 c 36 § 146; RRS § 8781. Formerly RCW 78.36.620.]

78.40.549 Switchboards. Switchboards: Main and distribution switch and fuse boards, underground, shall be made of incombustible insulating material, such as marble or slate, free from metallic veins, and be fixed in as dry a situation as practicable. [1917 c 36 § 147; RRS § 8782. Formerly RCW 78.36.630.]

78.40.552 Gloves and mats for repairmen. Precaution against shock: Gloves or mats of rubber or other suitable insulating material shall be provided and used by persons so engaged when repairs are made to the live parts of any electrical apparatus, or when the live parts of electrical apparatus have to be handled for the purpose of adjustment. [1917 c 36 § 148; RRS § 8783. Formerly RCW 78.36.640.]

78.40.555 Meddling with electrical system—Penalty. Any person who shall wilfully damage, or, without authority, alter or make connection to any portion of a mine electrical system, shall be guilty of a misdemeanor. [1917 c 36 § 149; RRS § 8784. Formerly RCW 78.36.650.]

78.40.558 Defects to be reported. Report of defective equipment: In the event of a breakdown, or of damage or injury to any portion of the electrical equipment of a mine, or of overheating, or of the appearance of sparks or arcs outside of enclosing casings, or in the event of any portion of the equipment, not a part of the electrical circuit, becoming alive, every such occurrence shall be promptly reported to the person in charge of the electrical equipment. [1917 c 36 § 150; RRS § 8785. Formerly RCW 78.36.660.]

78.40.561 Underground installations—Authorized personnel only—Fire protection. Underground stations and transformer rooms: Switchboards: All switches, circuit breakers, rheostats, fuses and instruments used in connection with underground motor-generators, rotary converters, high voltage motors, transformers, and low and medium voltage motors of more than fifty horsepower capacity, shall be installed upon a suitable switchboard, or its equivalent. Similar equipment, for low and medium voltage motors of fifty horsepower and less, may be separately installed if mounted upon installing bases of slate or equivalent insulating material.

In underground stations where switchboards are installed, there shall be a passageway in front of the switchboard not less than five feet in width, and if there are any high voltage connections at the back of the switchboard, any passageway behind the switchboard shall not be less than three feet clear.

Unauthorized persons: No person other than one authorized by the mine foreman shall enter a station or transformer room, or interfere with the workings of any apparatus connected therewith.

Fire equipment: Fire equipment of an approved type shall be kept in electrical stations and transformer rooms, ready for immediate use in extinguishing fires. [1917 c 36 § 151; RRS § 8786. Formerly RCW 78.36.670.]

78.40.564 Insulation. Transmission circuits and conductors: Power and light circuits: All high pressure wires used inside of the mines shall be in the form of insulated, lead covered or armored conductors, subject to insulation tests, and with carrying capacity according to the rules of the National Board of Fire Underwriters.

Medium or low pressure conductors may be bare, except in gaseous portions of the mines, where they may be used only on intake air. No bare conductors shall be used in rooms, or beyond the last cut-through in intake entries.

All underground cables and wires, other than trailing cables, unless provided with grounded or metallic covering, shall be supported by means of efficient insulators. Conductors connecting lamps to the power supply shall in all cases be insulated.

Main circuits: Every main circuit coming from generating or transformer stations shall there be provided with switches, fuses or circuit breakers.

In any gaseous mine, or gaseous portion of a mine, the electrical supply shall be brought underground only through such portions of the mine as are ventilated by the intake air, unless in lead incased cables.

Grounded circuits: One side of the grounded circuits shall be very effectively insulated from earth.

Underground trolley: In underground roads the trolley wires shall be securely supported on hangers placed at such intervals that the sag between points of support shall not exceed three inches. The sag between points of support can exceed three inches if the height of the trolley wires above the rail is five feet or more and does not touch the roof when the trolley passes under.

In underground haulage roads where the potential is higher than low voltage, all trolley or other bare power

wires which are placed less than six and one-half feet above the top rail, shall be efficiently protected. This protection shall consist in placing boards along the wire, which shall extend below it, or the use of other approved devices that will afford the same protection: *Provided*, That this rule shall not apply to entries or gangways already driven where the height is less than five feet above the lower rail.

All low pressure trolley wires must be guarded in front of loading chutes, slants, landings and partings where men are required to regularly work or pass under same.

All branch trolley lines shall be fitted with an automatic trolley switch or section insulator and line switch, or some other device that will allow the current to be shut off from such branch headings.

Joints in conductors: All joints in conductors shall be mechanically and electrically efficient, and wherever it is possible to do so, they shall be soldered. Wherever the conductors cannot be soldered together, suitable screw clamps or connectors shall be used. All joints in insulated wire shall, after the joint is complete, be re-insulated to at least the same extent as the remainder of the wire.

Where lead covered or armored cable is used, the lead or armor shall be electrically continuous throughout and shall be efficiently grounded.

Cables entering fittings: The exposed end of cables where they enter fittings of any description, shall be so protected and finished off that moisture cannot enter the cable, or the insulating material, if of an oily or viscous nature, leak.

Where unarmored cables or wires pass through metal frames, or into boxes or motor casings, the holes shall be substantially bushed with insulating bushings, and, where necessary, with gas tight bushings which cannot readily become displaced.

Joints in cables: Where cables other than signal cables are joined, suitable junction boxes shall be used, or the joints shall be soldered and the insulation, armoring, or lead covering replaced in at least as safe a condition as it was originally.

Power wires and cables in shafts: All power wires and cables in hoisting shafts or manway compartments shall be highly insulated and substantially fixed in position.

Cables and wires, unless provided with metallic coverings shall not be fixed to walls or timbers by means of insulated fastenings.

Trailing cables: Trailing cables for portable machines shall be especially flexible, heavily insulated and protected with extra stout braiding, hose pipes or other equally effective covering.

Each trailing cable in use shall be daily examined by the machine operator, for abrasions and other defects, and he shall also be required to carefully observe the trailing cable while in use, and shall at once report any defect to the person in charge of electrical equipment.

In gaseous portions of a mine a fixed terminal box shall be provided at the points where trailing cables are attached to the power supply. This terminal box shall be flameproof and shall contain a switch and fuse on

each pole of the circuit. The switch shall be so arranged that it can be operated only from without the box, when the latter is completely closed, and the switch shall also be so constructed that the trailing cables cannot be attached or removed when the switch is closed. [1917 c 36 § 152; RRS § 8787. Formerly RCW 78.36.680.]

78.40.567 Switches, fuses and circuit breakers—
Operation and capacity. Switches, fuses and circuit breakers: Operation and capacity: Fuses and automatic circuit breakers shall be so constructed as effectually to interrupt the current on short circuit, or when the current through them exceeds a predetermined value.

Circuit breakers shall be adjusted to trip at from fifty percent to one hundred and fifty percent of their normal rated capacity, and provided with an indicator which shall show at what current the circuit breaker is set to trip.

Fuses shall be stamped or marked, or shall have a label attached indicating the maximum current which they are intended to carry. Fuses shall only be adjusted or replaced by a competent person authorized by the mine foreman.

Feeder circuit breakers: Circuit breakers used to protect feeder circuits shall be set to trip when the current exceeds by more than fifty percent the current carrying capacity of the feeder. In case the feeder is subjected to overloads sufficient to trip the circuit breaker, but of short duration, the circuit breaker may be equipped with a device which shall prevent its acting unless the overload persists for a longer period than ten seconds.

Bases: All switches, circuit breakers and fuses shall have incombustible bases.

Switches: All points at which a circuit, other than a signal circuit, has to be made or broken, shall be provided with proper switches. The use of hooks or other makeshifts is prohibited, except that connection for gathering locomotives, or locomotives and machines used in driving headings or rooms, may be made to the trolley by means of suitable hooks; switches shall be so installed that they cannot be closed by gravity. In any gaseous portions of a mine switches, circuit breakers or fuses shall not be of the open type, but must be enclosed in explosion proof castings, or break under oil. [1917 c 36 § 153; RRS § 8788. Formerly RCW 78.36.690.]

78.40.570 Motors. Every stationary motor underground, together with its starting resistance, shall be protected by a fuse or circuit breaking device on at least one pole for direct current; and all poles for alternating current motors, and by switches arranged to entirely cut off the power from the motor. The above devices shall be installed in a convenient position near the motor.

Motors in coal mines: In any coal mine all motors, unless placed in such rooms as are separately ventilated with intake air, shall have all their current carrying parts, also their starters, terminals and connections, completely closed in explosion proof inclosures made of nonflammable materials. These inclosures shall not be opened except by an authorized person, and then only

when the motor is switched off. The power shall not be switched on while the inclosures are open.

Mechanization: In any coal mine, all electrical equipment shall be of permissible type approved by the U.S. bureau of mines, unless used strictly in pure intake air. Inby last open cross cut is not to be considered as pure intake air. (1) Frequent inspections must be made. All electrical parts including trailing cables and wiring must be kept in a safe condition. A permissible junction box must be used in connecting the power circuit, unless the connections are made in pure intake air. (2) All bolts, nuts, screws, and other means of fastenings must be in place, properly tightened and secured. The maximum clearance shall not exceed .004 of an inch on all flange fits. (3) Inspections, repairs, or renewals of electrical parts must not be made unless the current is disconnected from the power circuit. The power must not be turned on until all parts are properly assembled. (4) Spliced cables must not be used unless the splices are properly made and vulcanized. (5) The frame of all electrical equipment must be connected to an adequate ground. The power wires must not be used for grounding. (6) The power shall not be turned on any piece of electrical equipment until a test for explosive gas has been made, unless said equipment is operated in intake air. (7) A test for gas must be made before starting the mining machine or electric drill and also a test for gas must be made at least every ten minutes while the machine or drill is in operation. (8) Water must be used on the cutter bar of mining machines while in operation in dusty conditions. (9) It is positively forbidden to use mining machines or electrical drills unless they are in good condition. (10) Hand drills shall not be operated on a higher potential than low voltage.

The person in charge of a coal cutter or drilling machine shall not leave the machine while it is working, and shall, before leaving the working place, see that the current is cut off from the trailing cables.

In any portion of a mine if any electric sparking or arc be produced outside of a coal cutting or other portable motor, or by the cable or rails, the machine shall be stopped and not worked again until the defect is repaired, and the occurrence shall be reported to an official of the mine. [1947 c 166 § 5; 1943 c 211 § 10; 1933 c 137 § 1; 1917 c 36 § 154; Rem. Supp. 1947 § 8789. Formerly RCW 78.36.700 and 78.36.710.]

78.40.573 Electric locomotives. Electric locomotives: Trolley system: Electric haulage by locomotives operated by a trolley wire is not permissible in any gaseous portions of a mine, except upon the intake air.

In no case shall the potential used in the trolley system be higher than medium voltage. In mines opened after the passage of this chapter, or mines that are now operating where electricity is not used, when the power is not taken from a station now operating at a mine now operating, the potential shall not be higher than low voltage.

Storage battery system: Storage battery locomotives shall be used in gaseous mines only when the boxes containing the cells and all electrical parts are enclosed

in flameproof casings. [1917 c 36 § 155; RRS § 8790. Formerly RCW 78.36.720.]

78.40.576 Incandescent lamps. Incandescent lamps: In all mines the sockets of fixed incandescent lamps shall be of the so called "weather-proof" type, the exterior of which shall be entirely nonmetallic. Flexible lamp cord connections are prohibited.

Incandescent lamps shall not be used in gaseous mines, except under the conditions where trolley locomotives are allowable. [1917 c 36 § 156; RRS § 8791. Formerly RCW 78.36.730.]

78.40.579 Shot firing by electricity. Shot firing by electricity: Shot firing circuits: Electricity from any grounded circuit shall not be used for firing shots.

When shot firing cables or wires in the vicinity of power or lighting conductors, special precaution shall be taken to prevent the shot firing cables or wires from coming in contact with the light, power or any other circuits.

Shot firers: Only competent persons who have been properly instructed and duly authorized by the mine foreman shall be allowed to fire shots electrically in any mine.

Electric detonators: All electric detonators and leads thereto shall be suitable for the conditions under which the blasting is carried on, and shall be of a type approved by the testing station of the federal bureau of mines. Detonators shall be kept in a dry place and never stored with any other explosive.

Portable firing machines and batteries: Portable shot firing machines, sometimes called generators, shall be enclosed in a tightly constructed case when employed in any portion of the mine. All contacts, when made or broken, shall be within the case except that the binding posts for making connections to the firing leads may be outside.

No firing machine or battery shall be connected to the shot firing leads until all other steps preparatory to the firing of a shot have been completed, and all persons have moved to a place of safety, and no person other than the shot firer shall make such connection.

Disconnecting of leads: Immediately after the firing of a shot, the firing leads shall be disconnected from the supply or source of electricity, and no person shall approach a shot which has failed to explode until the firing leads have been so disconnected by the shot firer from the device and an interval of five minutes has elapsed since the last attempt to fire the shot.

Special systems: The use of special electrical shot firing systems, or equipment not covered by the foregoing, shall receive the approval of the testing station of the federal bureau of mines. [1917 c 36 § 157; RRS § 8792. Formerly RCW 78.38.360.]

78.40.581 Electric signalings. Electric signalings: Precautions: All proper precautions shall be taken to prevent electric signal and telephone wires from coming into contact with the other electric conductors, whether insulated or not.

Character of equipment: Bells, wires, insulators, contact-makers, and other apparatus used in connection with electric signaling underground, shall be of suitable design, of substantial and reliable construction, and erected in such a manner as to reduce the liability of failure or false signals to a minimum.

Maximum potential: In any gaseous portion of a mine, the potential used for signal purposes shall not exceed twenty-four volts, and bare wires shall not be used for signal circuits except in haulage roads. [1917 c 36 § 158; RRS § 8793. Formerly RCW 78.36.740.]

ARTICLE XV HOURS OF LABOR

78.40.585 Eight hour day—Penalty for violation by employer. It shall be unlawful for any person, firm or corporation operating any coal mine within the state of Washington, to cause any employee to remain at his place of work where the same is situated underground, for more than eight hours, exclusive of one-half hour for lunch, in any one calendar day of twenty-four hours. Any person, firm or corporation, or agent of any person, firm or corporation, violating the provisions of this section, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than ten dollars nor more than one hundred dollars for each offense. [1917 c 36 § 159; RRS § 8794. Prior: 1909 c 220 § 1. Formerly RCW 78.34.010.]

78.40.588 Eight hour day—Penalty for violation by employee. It shall be unlawful for any person in the employ of any person, firm or corporation operating any coal mine within the state of Washington, to wilfully remain at or in his working place, where the same shall be underground, to exceed eight hours, exclusive of one-half hour for lunch, in any one calendar day of twenty-four hours. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than five dollars nor more than twenty dollars for each offense. [1917 c 36 § 160; RRS § 8795. Formerly RCW 78.34.020.]

78.40.591 Eight hour day—Exceptions to eight hour day. The provisions of RCW 78.40.585 and 78.40.588 shall not apply to, or prohibit engineers, rope riders, motormen, cagers or others necessarily employed in transporting men in and out of the mine.

Provided, however, That all persons so employed shall not work more than ten hours in any one calendar day: *And, provided further,* That this chapter shall not be construed to prohibit extra hours of employment underground necessitated by a weekly change of shift, or where rendered necessary by reason of making unavoidable repairs, or for the protection of human life. [1917 c 36 § 161; RRS § 8796. Formerly RCW 78.34.030.]

78.40.594 Eight hour day—Enforcement. It shall be the duty of the mine inspector to enforce the provisions of this article. [1917 c 36 § 162; RRS § 8797. Formerly RCW 78.32.030, part.]

ARTICLE XVI GENERAL RULES

78.40.600 Oil and grease in mines—Use, storage.

It shall be unlawful to oil or grease any cars inside of any mine, unless the place where said oil or grease is used is thoroughly cleaned at least once every day to prevent the accumulation of waste oil or grease on the roads or in the drains at that point. Not more than one barrel of lubricating oil shall be permitted in any mine at one time, and it shall be kept in a fireproof building, cut out of solid rock, or made of masonry or concrete of sufficient thickness to insure safety in case of fire. [1917 c 36 § 163; RRS § 8798. Formerly RCW 78.34.760.]

78.40.603 Explosive oil in mines, when—Storage of motor oil. No explosive oil shall be taken into or used in any mine for lighting purposes, except when used in safety lamps. Oil used for motor purposes shall be contained in metal tanks not to exceed ten gallons, and if stored shall be put in a fireproof apartment, as provided in RCW 78.40.600. [1917 c 36 § 164; RRS § 8799. Formerly RCW 78.34.770.]

78.40.606 Employment of persons under eighteen, when—Penalty. No person under eighteen years of age shall be employed or permitted to be in any mine for the purpose of employment therein. No person under the age of sixteen years shall be employed or permitted to be in or about the surface workings of any mine for the purpose of employment: *Provided*, That this prohibition shall not affect the employment of boys or girls for clerical or messenger duty about the surface workings as permitted under the state and federal laws.

When an employer is in doubt as to the age of any person applying for employment in or about the mine, he shall demand and receive proof of the age of such person by certificate from the parents or guardian of such person before such person shall be employed. Said certificate shall consist of an affidavit, sworn and subscribed to before a justice of the peace or notary public, that the person making such affidavit, is of the prescribed age for employment.

Any person swearing falsely in regard to the age of a person shall be guilty of perjury and shall be punished as provided in the statutes of the state. [1973 1st ex.s. c 154 § 114; 1943 c 211 § 11; 1917 c 36 § 165; Rem. Supp. 1943 § 8800. Prior: 1909 c 117 § 4; 1891 c 81 § 12; 1887 c 21 § 6, part; 1885 p 132 § 24, part. Formerly RCW 78.34.040.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Perjury: Chapter 9.72 RCW.

78.40.609 Passing danger signals prohibited. It shall be unlawful for any person except the mine officials, and in case of necessity such other person as may be designated by them, to pass beyond any danger signal, or to enter any place which has been reported dangerous on bulletin board, unless he be accompanied by a mine official. However, this does not apply to regular danger signals permanently posted above the mine.

[1917 c 36 § 166; RRS § 8801. Formerly RCW 78.34.050.]

78.40.612 Miners to check in and out. No mine employee shall enter or leave a mine without indicating the fact of entering or leaving said mine by some suitable checking system provided by and under the control of the operator. [1917 c 36 § 167; RRS § 8802. Formerly RCW 78.34.060, part.]

78.40.615 Entry by unauthorized personnel. No unauthorized person shall enter the mine without permission from the superintendent or mine foreman. [1917 c 36 § 168; RRS § 8803. Formerly RCW 78.34.060, part.]

78.40.618 Intoxicants prohibited—Penalty. No person shall go into or around a mine, the buildings or machinery connected therewith, while under the influence of intoxicants. No person shall use, carry, or have in his possession at, in, or around a mine, the buildings or the machinery connected therewith, any intoxicants. Any violation of this section will be a misdemeanor under this chapter. [1917 c 36 § 169; RRS § 8804. Formerly RCW 78.34.070.]

78.40.621 Mining pillars alone prohibited. No person shall be employed to mine out pillars unless in company with one or more miners. [1917 c 36 § 170; RRS § 8805. Formerly RCW 78.34.080.]

78.40.624 Workman to examine working place. Every workman employed in the mine shall examine his working place before commencing work, and after any stoppage of work during the shift he shall repeat such examination. [1917 c 36 § 171; RRS § 8806.]

Miner to examine safety of working place—Safety rules: RCW 78.40.732.

78.40.627 Posting and advising new men of rules. Every workman, when first employed, shall have his attention directed by the mine foreman, or his assistant, to the general and special rules contained in this chapter. Said rules shall be posted at a conspicuous place at or near the main entrance to the mine. [1917 c 36 § 172; RRS § 8807. Prior: 1891 c 81 § 20, part; 1885 p 232 § 24, part. Formerly RCW 78.34.090.]

Copies of laws and rules for employees: RCW 78.40.711.

78.40.630 Duty to inform foreman of dangers. Employees shall notify the mine foreman, or the assistant mine foreman, of the unsafe condition of any working place, hauling roads or traveling ways, or of damage to doors, brattices or stoppings, or of obstructions in the air passages, when said conditions are known to them. [1917 c 36 § 173; RRS § 8808. Formerly RCW 78.34.100.]

78.40.633 Foot travel on slopes, roads, prohibited. No person shall be allowed to travel on foot to and from his work on any hoisting slope, inclined plane, or locomotive road, unless no other roads are provided for that purpose, and then only at such times as permitted by

the mine foreman. [1917 c 36 § 174; RRS § 8809. Formerly RCW 78.34.110.]

Riding loaded cars—Traveling ways for men: RCW 78.40.296.

78.40.636 Riding cages and cars in shafts and slopes prohibited. No person shall ride upon or against any loaded car or cage in any shaft or slope in any mine. No person other than the trip rider shall be permitted to ride on empty trips on any slope, or inclined plane, except as provided for in other sections of this chapter. [1917 c 36 § 175; RRS § 8810. Prior: 1891 c 81 § 19, part; 1887 c 21 § 7, part; 1885 p 132 § 24, part. Formerly RCW 78.34.130.]

Men and materials not to be hoisted together: RCW 78.40.284.

Riding loaded cars—Traveling ways for men: RCW 78.40.296.

78.40.639 Riding full cars prohibited—Exception. No person other than the driver or trip rider, shall be allowed to ride on the full car, except mine officials and repair men. [1917 c 36 § 176; RRS § 8811. Formerly RCW 78.34.120, part.]

Riding loaded cars—Traveling ways for men: RCW 78.40.296.

78.40.642 Destroying signs, etc.—Prosecution. Any person who shall deface, pull down, or destroy any notice board, danger signal, general or special rules, record books or mining laws, shall be prosecuted by the mine inspector on notice given by the superintendent, or obtained from other sources, as provided for in RCW 78.40.765. [1917 c 36 § 177; RRS § 8812. Formerly RCW 78.34.790.]

78.40.645 Tampering with equipment prohibited. All persons are forbidden to meddle or tamper in any way with any electric or signal wires, or any other equipment in or about the mine. [1917 c 36 § 178; RRS § 8813. Formerly RCW 78.36.750.]

78.40.648 Quantity of explosives allowed in mine. No powder or high explosive shall be taken into the mine at any one time by any person in greater quantities than is required for use in one shift. [1917 c 36 § 179; RRS § 8814.]

High explosives: RCW 78.40.476.

78.40.651 Limitations on storage and handling of explosives. No explosive shall be stored in any tippie or weighing office, and no naked lights shall be used while the attendant is weighing and giving out explosives. [1917 c 36 § 180; RRS § 8815. Formerly RCW 78.38.250.]

Storage of explosives—Issuance to workmen—Penalty: RCW 78.40.488.

Use of lamps and lighted pipes near explosives—Opening receptacles: RCW 78.40.473.

78.40.654 Crowding on and off cars prohibited—Penalty. Any person crowding or pushing to get on or off the cage or car shall be deemed guilty of a misdemeanor, and the mine inspector shall prosecute him in accordance with RCW 78.40.765, when the matter is

reported to him by the superintendent. [1917 c 36 § 181; RRS § 8816. Formerly RCW 78.34.140.]

78.40.657 Prerequisite to entrusting lamps to workmen. No safety lamp shall be entrusted to any person for use in a mine, until said person has given satisfactory evidence to the foreman that he understands the proper use thereof, and the danger of tampering with the same. [1917 c 36 § 182; RRS § 8817. Formerly RCW 78.36.060.]

Safety lamps: RCW 78.40.500–78.40.512.

78.40.660 Unauthorized possession of keys to safety lamps—Prosecution. No one, except a person duly authorized by this chapter, shall have in his possession a key or other instrument for the purpose of unlocking any safety lamp in any mine where locked safety lamps are used. Other persons than those duly authorized by this chapter, having keys or other instruments for the opening of safety lamps, shall be prosecuted by the state mine inspector. [1917 c 36 § 183; RRS § 8818. Formerly RCW 78.36.070.]

78.40.663 Brushing or blowing gas prohibited. Any accumulation of explosive gas in a mine shall not be removed by brushing, or by blowing out by the use of compressed air. [1943 c 211 § 12; 1917 c 36 § 184; Rem. Supp. 1943 § 8819. Formerly RCW 78.34.740.]

78.40.666 Action when gas ignited by blast—Leaving gas blowers burning prohibited—Prosecution. When gas is ignited by a blast, or otherwise, the person having charge of the place where the said gas is ignited, shall immediately extinguish it, if possible, and if unable to do so, he shall immediately notify the mine foreman, or the assistant mine foreman, of the fact. Miners must see that no gas blowers are left burning upon leaving their working places. It shall be the duty of the superintendent to notify the mine inspector of any violation of this rule, and the inspector shall then prosecute as provided for in RCW 78.40.765. [1917 c 36 § 185; RRS § 8820. Formerly RCW 78.34.750.]

78.40.669 Warning by shot firer. When a shot firer is about to fire a blast where the miners are not present, he shall be careful to notify all persons who may be endangered thereby, and shall give sufficient alarm so that any person approaching may be warned of the danger. [1917 c 36 § 186; RRS § 8821. Formerly RCW 78.38.290.]

78.40.672 Warning when driving crosscuts. In driving crosscuts through pillars, before firing a blast, the miner must notify in person the workmen in the place toward which he is driving, so that they may find a place of safety. He shall also guard the passages on either side of his place at every shot, so that no person may come unawares upon it. [1917 c 36 § 187; RRS § 8822. Formerly RCW 78.38.300.]

78.40.675 Precautions in handling explosives. Whenever a miner or shot firer shall open a box containing powder or other explosives, or while in any manner handling the same, he shall first place his lamp, if open, not less than five feet from such explosive and in such a position that the air current cannot convey sparks to the explosive, and he shall not smoke while handling explosives. [1917 c 36 § 188; RRS § 8823. Formerly RCW 78.38.220, part.]

Use of lamps and lighted pipes near explosives—Opening receptacles: RCW 78.40.473.

78.40.678 Types of tamping bars for blasting enumerated. In charging and tamping a hole for blasting, no person shall use any iron or steel needle. The tamping bar for high explosives shall be made of wood. For black powder iron tamping bars must be tipped with copper at least five inches in length. [1917 c 36 § 189; RRS § 8824. Prior: 1887 c 21 § 19, part.]

Needles and tamping bars—Depth of holes—Unconfined shots—Penalty: RCW 78.40.485.

78.40.681 Blasting holes. No explosive shall be forcibly pressed into a hole that is of insufficient size, and when a hole has been charged the explosive shall not be taken out, and no hole shall be bored for blasting at a distance of less than twelve inches from any hole where the charge has misfired, and no hole for blasting shall be drilled more than six feet deep. [1917 c 36 § 190; RRS § 8825. Formerly RCW 78.38.370.]

Depth of hole: RCW 78.40.485.

78.40.684 Incombustible tamping material in gaseous or dusty mines—Penalty. In gaseous or dusty mines, shot firers or other persons charging holes for blasting, shall use incombustible material for tamping. All holes before being fired shall be solidly tamped the full length of the hole. Any person who violates this rule shall be guilty of a misdemeanor. [1917 c 36 § 191; RRS § 8826. Formerly RCW 78.38.350.]

78.40.687 Abandoned shafts to be fenced or filled. Every abandoned slope, shaft, airhole or drift, shall be fenced or filled in such a manner as to afford proper and continuous protection to all persons and stock endangered thereby. [1943 c 211 § 13; 1917 c 36 § 192; Rem. Supp. 1943 § 8827. Formerly RCW 78.34.700.]

78.40.690 Entering abandoned portions prohibited—Prosecution. No person shall go into an old or abandoned portion of any mine, or into any other place that is not in actual course of working, without permission from a mine official, and no person shall travel to and from his work except by the traveling way assigned for that purpose. It shall be the duty of the mine inspector to prosecute all persons who violate this rule, in accordance with RCW 78.40.765. [1917 c 36 § 193; RRS § 8828. Formerly RCW 78.34.150.]

78.40.693 Interference with airway or roads prohibited. Workmen and all other persons are expressly forbidden to commit any nuisance, or throw into, deposit

or leave coal or dirt, stones or other rubbish in the airway or road to interfere with, pollute or hinder the air passing into and through the mine. [1917 c 36 § 194; RRS § 8829. Formerly RCW 78.34.160.]

78.40.696 Signal code to be posted. In all shafts and slopes where persons, coal and other materials are hoisted by machinery, the code of signals shall be posted. [1917 c 36 § 195; RRS § 8830. Formerly RCW 78.36.810.]

78.40.699 Smokers' articles prohibited. No person shall carry any matches, pipes or other smokers' articles into a mine, or portion of a mine worked with safety lamps, nor shall he have any of said articles in his possession while in such a mine. [1917 c 36 § 196; RRS § 8831. Formerly RCW 78.34.170.]

78.40.702 Prompt treatment of injured. If any person shall receive any injury in or about the mine requiring surgical or medical treatment, and same is reported to the mine foreman, he shall see that said injured person receives such treatment immediately. [1917 c 36 § 197; RRS § 8832. Formerly RCW 78.34.470.]

78.40.705 Contravening rules—Penalty. Every person who contravenes or does not comply with any of the special or general rules in this chapter shall be deemed guilty of a misdemeanor. [1917 c 36 § 198; RRS § 8833. Formerly RCW 78.32.030, part.]

78.40.708 Dead line set in shafts or slopes—Penalty. At the foot of any shaft or slope, or at any intermediate lift from which men and coal are regularly hoisted, the operator or superintendent or foreman shall designate a dead line beyond which men shall not pass in order to be hoisted out of the shaft or slope, until they are notified by the cager or foreman in charge of said place. Failure to recognize this rule shall be a misdemeanor under this chapter. [1917 c 36 § 199; RRS § 8834. Formerly RCW 78.38.080.]

78.40.711 Copies of laws and rules for employees. Copies of these rules shall be printed in English, by the operator, and each workman in and around the mine shall procure a copy. If he cannot read the English language, he must at his own expense, procure an interpreter to correctly interpret the rules to him. The workman will pay the operator twenty-five cents per copy for the rules, and if he returns the same to the operator in legible condition, the amount so paid by him shall be returned. [1919 c 201 § 6; 1917 c 36 § 200; RRS § 8835. Prior: 1891 c 81 § 20, part; 1885 p 232 § 24, part. Formerly RCW 78.34.230.]

Posting and advising new men of rules: RCW 78.40.627.

78.40.714 Meddling with identifying checks—Penalty. It shall be unlawful to change, exchange, substitute, alter or move any number or check or other device or sign used to indicate or identify the person or persons to whom credit or pay is due for the mining or loading of coal in any car or appliance containing the

same; and it shall be unlawful for any person to place any number, check, device or sign upon any car or other appliance loaded by any other person in or about the mine. Any violation of this provision shall be deemed a misdemeanor under this chapter. [1917 c 36 § 201; RRS § 8836. Formerly RCW 78.32.070.]

78.40.717 Prosecutions by state mine inspector. The state mine inspector shall prosecute all violators of the mining law. [1917 c 36 § 202; RRS § 8837. Formerly RCW 78.32.030, part.]

78.40.720 Cleared space around air shafts, escape-ment ways. All surface timber, brush and other inflammable material must be kept cleared for a distance of one hundred feet on all sides of the air shafts and escapement ways: *Provided*, That this regulation shall not apply to a reasonable amount of cut timber kept on hand for immediate use underground. [1917 c 36 § 203; RRS § 8838. Formerly RCW 78.38.010.]

Violation, penalty: RCW 78.40.723.

78.40.723 Scales—Record of weights—Weighmen and check weighmen, oaths, duties—Violation, penalty. (1) The operator of every coal mine where the miners are paid by the weight of their output, shall provide at such mine suitable and accurate scales for the weighing of such coal, and a correct record shall be kept of all coal so weighed, and each day's record shall be posted where it is open at all hours to the inspection of miners. Sufficient weights shall be furnished by the operator for the purpose of testing the accuracy of said scales: *Provided, however*, That where a check weighman is employed the operator shall not be required to post each day's record.

(2) The miners employed by or engaged in working at any coal mine in this state shall have the privilege, if they desire, of employing at their expense a check weighman, whose compensation shall be deducted by the mine operator before paying the wages due the miner, and who shall have like rights, powers and privileges in the weighing of coal as the regular weighman, and be subject to the same oath and penalties as the regular weighman. Said oath or affirmation shall be conspicuously posted in the weigh office.

(3) The weighman and check weighman employed at any mine shall subscribe an oath or affirmation before a justice of the peace, or other officer authorized to administer oaths, in form as follows, to wit: (Date) _____ I, _____ depose and say that I will do justice, as weighman, between the employer and employee, and weigh correctly the output of coal from the mine or mines, and keep an accurate record thereof, posting a daily bulletin of such weights for the examination of the employee.

(Sign here) _____

Sworn to and subscribed before me, a _____ on the day and dates above written.

(4) Any weigher of coal, check weighman, or any person so employed, who shall knowingly violate any of the provisions of this or the *preceding section, shall be deemed guilty of a misdemeanor, and upon conviction

shall be punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars for each offense, or by imprisonment in the county jail for a period not to exceed thirty days, or by both such fine and imprisonment, proceedings to be instituted in any court having jurisdiction therein. [1935 c 6 § 1; 1917 c 36 § 204; RRS § 8839. Prior: 1891 c 161 § 2. Formerly RCW 78.32.050 and 78.32.060.]

***Reviser's note:** The "preceding section" (1917 c 36 § 203) as codified is RCW 78.40.720.

78.40.726 Returning to missed shots. No person shall return to a missed shot, if lighted with a squib, until twenty minutes have elapsed from the time of lighting same, or, if lighted with a fuse, until eight hours have elapsed; and no person shall return to a missed shot when the firing is done by electricity unless the wires are disconnected from the battery. [1917 c 36 § 205; RRS § 8840. Formerly RCW 78.38.320.]

Shot firing by electricity: RCW 78.40.579.

78.40.729 Bribery to procure employment prohibited—Penalty. Any mine superintendent, mine foreman, or other person or persons who shall receive or solicit any sum of money or other valuable consideration, from any person for the purpose of continuing in his or their employ, or for the purpose of procuring employment, shall be guilty of a misdemeanor. Any person offering any mine superintendent, or mine foreman, any sum of money or any other valuable consideration as a bribe for the purpose of obtaining employment or retaining employment, shall be guilty of a misdemeanor, and in either case of superintendent, mine foreman, or other person, upon conviction they shall be subject to a fine of not less than fifty dollars, nor more than two hundred dollars, or by imprisonment in the county jail for a period not to exceed six months, or by both such fine and imprisonment, proceedings to be instituted in any court having jurisdiction thereof. [1917 c 36 § 206; RRS § 8841. Formerly RCW 78.34.210.]

78.40.732 Miner to examine safety of working place—Safety rules. The miner shall examine his working place before beginning work, and take down all dangerous slate, or otherwise make it safe by properly timbering it, before commencing to mine or load coal. He shall examine his place to see whether the fire boss has left the date marks indicating his examination thereof, and if said marks cannot be found it shall be the duty of the miner to notify the mine foreman, or the assistant mine foreman, of the fact immediately. The miner shall at all times be careful to keep his working place in a safe condition.

Should he at any time find his place becoming dangerous from gas or from roof or from any unusual condition that may arise, he shall at once cease working and inform the mine foreman, or the assistant mine foreman, of said danger, but before leaving his place he shall put some plain warning across the entrance thereto to warn others against entering into danger.

After each blast he shall exercise care in examining the roof and coal, and shall secure them safely before beginning work.

He shall order all props, cap pieces, and all other timbers necessary at least one day in advance of needing them, or as provided for in the rules of the mine. If he fails to receive said timbers and finds his place unsafe, he shall vacate it until the necessary timbers are supplied.

The management of any mine may submit to the mine inspector, for his approval, uniform rules for timbering at mines where conditions may be favorable for same. If approved by the mine inspector, they will become a part of the rules of said mine.

In all working places where it is necessary to temporarily remove posts, substitute posting shall be done when necessary for safety and such posts as are removed must be replaced as soon as possible by permanent timbers.

Under no condition shall the miner use coal dust or other combustible material for tamping in any gaseous or dusty mines.

When places are liable to generate sudden outbursts of explosive gas, no miner shall be allowed to charge or fire shorts [shots] except under the supervision and with the consent of the mine foreman, or the assistant mine foreman, or some other competent person designated by the mine foreman for that purpose.

The miner shall remain during working hours in the place assigned to him, and he shall not leave his working place without the consent of the mine foreman, assistant mine foreman, or fire boss, unless called upon to assist others, or in case of need. He shall not wander about the hauling roads or enter abandoned or idle workings. [1943 c 211 § 14; 1917 c 36 § 207; Rem. Supp. 1943 § 8842. Formerly RCW 78.34.180, 78.34.190 and 78.38.340.]

Needles and tamping bars—Depth of holes—Unconfined shots—Penalty: RCW 78.40.485.

Workman to examine working place: RCW 78.40.624.

Workmen firing shots: RCW 78.40.441, 78.40.444, 78.40.579, 78.40.669 and 78.40.726.

78.40.735 Duties of driver. Duties of driver: When a driver has occasion to leave his trip, he must be careful to see that it is left, when possible, in a safe place secure from cars and other dangers, and where it will not endanger the drivers of other trips or other persons.

He must take care while making his trip down grade to have the brakes or sprags so adjusted that he can keep the cars under control and prevent them from running over himself or others.

He shall not leave any cars standing where they may materially obstruct the ventilating current, except in case of accident, which he shall promptly report to the mine foreman, or assistant mine foreman.

He shall not allow any person to ride on loaded mine cars. He shall not allow any person to drive his horses or mules in his stead, unless authorized by a mine official. When it is his duty to open a door for the purpose of passing his trip through he shall see that the door is

immediately closed thereafter. [1917 c 36 § 208; RRS § 8843. Formerly RCW 78.32.800.]

78.40.738 Duties of a trip rider. Duties of a trip rider: The trip rider shall exercise care in seeing that all hitchings are safe for use and that all the trip is coupled before starting, and should he at any time see any material defect in the rope, link or chain, he shall immediately remedy said defect, or, if he is unable to do so, he shall detain the trip and report the matter to the mine foreman or the assistant mine foreman. He shall not allow any person to ride on the loaded or empty trip, except as provided in RCW 78.40.639. [1917 c 36 § 209; RRS § 8844. Formerly RCW 78.32.810.]

78.40.741 Duties of hoisting engineers. Duties of hoisting engineers: It shall be the duty of the engineer, who shall be a temperate competent person, to keep a careful watch over his engine and all machinery under his charge. He shall make himself acquainted with the signal codes provided for in this chapter, and by the special rules of the mine.

He shall not allow any unauthorized person to enter the engine house, nor shall he allow any person to handle or run the engine without the permission of the superintendent.

When workmen are being lowered or raised he shall take special precautions to keep the engine well under control. [1917 c 36 § 210; RRS § 8845. Formerly RCW 78.32.820.]

78.40.744 Duties of motorman and locomotive engineer. Duties of motorman and locomotive engineer: The motorman or locomotive engineer shall keep a sharp lookout ahead, and sound the whistle or alarm bell frequently when coming near the parting switches or landings, and shall not exceed the limit allowed by the mine foreman. He shall see that the motors, cables and controlling parts are kept clean and in a safe operating condition, and that the headlight is burning properly when the locomotive is in motion. He shall not allow any person, except his attendant, or mine officials, to ride on the locomotive or motor. [1917 c 36 § 211; RRS § 8846. Formerly RCW 78.32.830.]

78.40.747 Duties of firemen. Duties of firemen: Every fireman in charge of a boiler or boilers for the generation of steam shall keep a careful watch over same. He shall see that the steam pressure does not at any time exceed the limit allowed by the superintendent or master mechanic; he shall frequently try the safety valves, and shall not increase the weight on the same. He shall maintain a proper height of water in each boiler, and if anything should happen to prevent this he shall report it without delay to the superintendent or master mechanic, or other person designated by the superintendent, and take such other action as may under the circumstances be best for the protection of life and preservation of property. [1917 c 36 § 212; RRS § 8847. Formerly RCW 78.32.840.]

78.40.750 Duties of fan operator. The person in charge of the ventilating fan at a mine shall keep it running at such speed as the mine foreman shall direct in writing. He shall report promptly to the mine foreman, or assistant mine foreman, in case of accident to boiler or fan machinery. If only ordinary repairs to the fan or machinery become necessary, he shall await the instructions of the mine foreman or assistant mine foreman before stopping the fan. Should it become impossible to run the fan, or become necessary to stop it to prevent its destruction, he shall at once notify the superintendent or mine foreman, who shall give immediate warning to the persons in the mine. [1917 c 36 § 213; RRS § 8848. Prior: 1897 c 45 § 9. Formerly RCW 78.32.850.]

78.40.753 Duties of hooker-on. The hooker-on at the bottom of any slope shall be over eighteen years of age, and he shall be careful to see that the cars are properly coupled to a rope or chain, and to each other, and the safety device is properly attached to man trips, before signaling the engineer. He shall personally attend to the signals, and see that the provisions of this chapter in respect to hoisting and lowering persons in shafts or slopes are complied with. [1917 c 36 § 214; RRS § 8849. Formerly RCW 78.32.860.]

Hoists and hoisting: RCW 78.40.270–78.40.296.

78.40.756 Duties of cager. Duties of cager: The cager at the bottom of any shaft shall be over eighteen years of age. He shall not attempt to withdraw the car until the cage comes to a rest, and when putting the full car on the cage, he must be careful to see that the springs or catches are properly adjusted to keep the car in place before signaling the engineer. He shall personally attend the signals and see that the provisions of this chapter in respect to hoisting and lowering persons in shafts or slopes are complied with. [1917 c 36 § 215; RRS § 8850. Formerly RCW 78.32.870.]

Hoists and hoisting: RCW 78.40.270–78.40.296.

78.40.759 Duties of topmen—Enforcement of non-conflicting rules and regulations. (1) The topman of a shaft shall not allow any tools to be placed on the same cage with persons, or on either cage when persons are being lowered into the mine, except for the purpose of repairing the shaft or the machinery therein. The men shall place their tools in cars provided for that purpose, which cars shall be lowered before or after the men have been lowered. He shall also see that no driver or other person descends the shaft with any horse or mule, unless the said horse or mule is secured in a suitable box or safely penned, and only the driver in charge of said horse or mule shall accompany it in any cage. The topman of a shaft shall see that the springs or keeps for the cage to rest upon are kept in good working order, and when taking the full car off he must be careful that no coal or other material is allowed to fall down the shaft.

(2) The topman of a slope or inclined plane shall see that the safety device is closed at all times, except when

cars or trips are passing, and in no case shall said safety device be withdrawn until the cars are coupled to the rope or chain and the proper signal given. He shall carefully inspect each day the rope and chain used for hoisting or lowering men or coal, and shall promptly report to the superintendent any defect discovered, and shall use care in attaching securely the cars to the rope. He shall ring the alarm bell in case of accident.

(3) It shall be the duty of all topmen to report to the superintendent any violation of RCW 78.40.675.

(4) Nothing herein shall be construed to prevent the owner or operator of a coal mine from enforcing any rules or regulations now in effect, or that may be later adopted, which do not conflict with the provisions of this chapter. [1917 c 36 § 216; RRS § 8851. Formerly RCW 78.32.880 and 78.38.220, part.]

ARTICLE XVII OFFENSES AND PENALTIES

78.40.765 Interference with appliances or employees—Penalty—General penalty. Any miner, workman, or other person, who shall knowingly injure any water gauge, barometer, air course or brattice, or shall obstruct or throw open any airway, or shall handle or disturb any part of the machinery of the hoisting engine, or open a door in the mine and not have the same closed again, whereby danger is produced either to the mine or to those that work therein, or who shall enter into any part of the mine against caution, or who shall interfere with or intimidate any engineer, fireman, or other employee in or about such mine in the discharge of his duties or the performance of his labor, or who shall disobey any order given in pursuance of this chapter, or violate any of the provisions established by this chapter, for which the penalty is not otherwise provided, and who shall do any act whereby the lives and health of persons working in the mine, or the security of the mine or mines or the machinery thereof is endangered, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than two hundred dollars nor less than fifty dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment, in the discretion of the court. [1917 c 36 § 217; 1891 c 81 § 21; 1887 c 21 § 16; RRS § 8852. Formerly RCW 78.34.200.]

Bribery to procure employment prohibited—Penalty: RCW 78.40.729.

Contravening rules—Penalty: RCW 78.40.705.

Deadline set in shafts or slopes—Penalty: RCW 78.40.708.

Eight hour day

penalty for violation by employee: RCW 78.40.588.

penalty for violation by employer: RCW 78.40.585.

Employment of persons under eighteen, when—Penalty: RCW 78.40.606.

First aid kits—Penalties: RCW 78.40.462.

Incombustible tamping material in gaseous or dusty mines—Penalty: RCW 78.40.684.

Internal combustion engines prohibited—Penalty: RCW 78.40.357.

Intoxicants prohibited—Penalty: RCW 78.40.618.

Meddling with electrical system—Penalty: RCW 78.40.555.

Meddling with identifying checks—Penalty: RCW 78.40.714.

Needles and tamping bars—Depth of holes—Unconfined shots—Penalty: RCW 78.40.485.

Operator's reports, penalty: RCW 78.40.375.

Safety lamps, penalty: RCW 78.40.509.

Scales—Record of weights—Weighmen and check weighmen, oaths, duties—Violation, penalty: RCW 78.40.723.

Storage of explosives—Issuance to workmen—Penalty: RCW 78.40.488.

Width of barrier pillars—Penalty: RCW 78.40.372.

ARTICLE XVIII CONSTRUCTION

78.40.770 General repealer. All acts or parts of acts relating to coal mining in the state of Washington, or to the mine inspector of the state of Washington, be, and the same are hereby repealed. [1917 c 36 § 218; RRS § 8853.]

78.40.771 Severability—1917 c 36. If it shall be adjudicated that any section or part of a section of this chapter shall be unconstitutional and invalid for any reason, an adjudication of invalidity of said section or part of a section shall not affect the validity of the chapter as a whole, or any part thereof. [1917 c 36 § 219; RRS § 8854.]

78.40.772 Effective date for certain compliance. Every operator of a mine affected by this chapter shall be given six months after this chapter takes effect to make any necessary changes or secure any materials or supplies to comply with the provisions of this chapter. [1917 c 36 § 220; RRS § 8855.]

78.40.773 What constitutes a coal mine—Inspection. No coal mine shall be considered a mine for the purpose of this chapter unless five men or more are employed underground on one shift, nor shall mines employing less than ten men be subject to the provisions of this chapter, except that the inspector of mines shall have the right to enter any of the places where men are at work within such prospect, and if the conditions therein are dangerous to life, the inspector may, and it shall be his duty to stop work on such prospect until such dangerous place is rendered safe, or the same be placed in control of a certified mine foreman: *Provided*, That all such operators of prospects and places herein in this section referred to shall make reports to the state mine inspector as are required to be made by other mines and mine operators under the provisions of this chapter. [1917 c 36 § 221; RRS § 8856. Prior: 1897 c 45 § 6, part; 1873 p 28 § 21; Code 1881 § 2638. Formerly RCW 78.32.020.]

ARTICLE XIX SAFETY COMMITTEE

78.40.780 Safety committee—Members, officers, records, duties—Appeals to inspector. In every mine a general safety committee shall be selected, composed of the mine superintendent or manager of mines, one man selected by the employees or any association of employees in or around said mine, and a third member selected by these two.

The general safety committee shall elect one of the members to act as chairman and one to act as secretary. The duties of the chairman shall be to preside at all meetings of the general safety committee, enforce its rules and regulations and see that its business is conducted in a prompt and businesslike manner. The secretary shall keep an accurate written record of the proceedings of all meetings, conduct its correspondence and post notices of regular and special meetings and other matters pertaining to safety.

The duties of the general safety committee shall be to investigate all serious and fatal accidents; make bi-monthly examination of the mine, their findings and recommendations to be made in writing, one copy to be sent to the chief state mine inspector. They shall coordinate with the management in the work of supervision of bulletin board service, and the outline and conduct of safety educational activities, arrange the programs for all safety meetings, pass on all safety controversial matters referred to them by subsafety committees. They shall meet with all other safety committees as often as possible, but not less often than once each month, and discuss safety measures, violations of safety rules and practices, and take up any other safety subject that will tend to eliminate accidents and pass on all safety suggestions referred to them by any employer or employee.

Should there be any disagreement among the members of the general safety committee relating to any safety matter brought or referred to them for disposition, either side may appeal to the chief state mine inspector, who shall in this case pass on controversial safety matters. His decision will be final and binding on both parties.

The written records of the general safety committee shall be open for inspection at all times by the chief state mine inspector, or his deputies or any state official connected with accident or safety work. [1927 c 306 § 12; RRS § 8856-1. Formerly RCW 78.34.400 and 78.34.410.]

78.40.783 Subsafety committee—Members, qualifications, duties. At mines employing more than twenty-five men there shall be a subsafety committee at each level or entry, consisting of a mine foreman, assistant mine foreman, or fire boss, and one employee selected by the men working on such level or entry.

The members of this committee shall have had six months' experience in this mine or at mines where similar conditions exist. Workmen serving on safety committee may be changed every two months.

Where workman finds dangerous conditions that he cannot correct himself, he shall report it to the official in charge of that section of the mine. If the condition is not corrected in a reasonable time he shall then call the other member of the safety committee to make an investigation. If the subsafety committee shall fail to agree they shall report to the general safety committee.

All level or entry safety committees shall attend and report at all meetings of the general safety committee.

The workmen's representative on the subsafety committee shall not visit or inspect any part of the mine except when accompanied by the other member of the

subsafety committee. If for any reason either member of the committee fails to act on any complaint it shall be referred to the general safety committee. At all mines employing less than twenty-five men the general safety committee shall have general supervision over all safety matters. [1927 c 306 § 13; RRS § 8856-2. Formerly RCW 78.34.420.]

78.40.786 Outside committee—Members, duties. At each mine employing more than twenty-five men there shall be an outside committee consisting of the outside foreman, master mechanic and two employees selected by the men working on the outside. Workmen serving on outside safety committee may be changed every two months. Where workman finds dangerous or unsafe conditions that he cannot correct himself, he shall report it to the outside foreman. If the condition is not corrected in a reasonable time, he shall report it to one of the workmen's representatives on the safety committee, who shall then call the other members of the safety committee to make an investigation. If the outside safety committee shall fail to agree they shall report it to the general safety committee. The workmen's representatives shall not visit or inspect any part of the outside workings except when accompanied by the outside foreman or master mechanic. If for any reason any member of the committee fails to act upon any complaint called to his attention, it shall be referred to the general safety committees. It shall be understood that all safety committees shall confine themselves to safety measures and accident prevention alone, the sole purpose of their organization being to preserve the life and limb of workmen in and around the mines. [1927 c 306 § 14; RRS § 8856-3. Formerly RCW 78.34.430.]

78.40.789 Safety bulletin boards. It shall be the duty of the mine operators of each mine to establish and maintain a safety bulletin board service, to provide at least one standard bulletin board located in such place as to attract the attention of the greatest number of mine employees, and to post upon such board, all bulletins and such other matters as will be valuable in the educational development of the prevention of accidents.

The number of bulletin boards required and the frequency of displaying new bulletins, or shifting bulletins from board to board, shall be determined by the operator or by the operator and the chief state mine inspector, or by the chief state mine inspector.

Whenever a lesson of value to the mine is determined as the result of an investigation of an accident occurring within such mine, which will be of value in preventing the recurrence of future accidents of similar nature, the same can be given the greatest accident prevention value by being made the subject of a typewritten or other form of bulletin descriptive of the accident, giving the cause of, and recommendations covering measures adopted to prevent accidents of like or similar nature or cause.

The safety bulletin board shall be open to the services of bulletins on mine safety measures only; to the mine safety committee, the state mining board, chief state mine inspector and the employer's report of accidents

occurring at the mine during the previous calendar month. [1927 c 306 § 15; RRS § 8856-4. Formerly RCW 78.34.600.]

78.40.791 Rule for loaders in certain mines—Signs. At all mines using the gangway and counter system, a rule shall be enforced to compel the loaders to keep the coal in the chutes above the bulkhead, thereby preventing a short circuit of the air that may create a dangerous condition in some of the working places further inside.

Adequate signs approved by the chief state mine inspector shall be placed at intervals on the gangway calling attention to the foregoing danger. [1927 c 306 § 16; RRS § 8856-5. Formerly RCW 78.34.800.]

78.40.794 Workman to report violations of safety rules. Whenever any workman in or about any mine shall observe any violation of the safety rules and regulations governing the mine, or unsafe conditions or unsafe practice, it shall be his duty to report the same to a member of the safety committee. [1927 c 306 § 17; RRS § 8856-6. Formerly RCW 78.34.810.]

78.40.797 First aid—Education, treatment, records. There shall be developed at each mine a requirement of first aid education that will result in the practical and intensive education in first aid administration of a minimum of ten percent of the employment of said mine.

The operating company shall keep a record of all employees who have completed the course of required training in first aid, and a complete copy of such record shall be furnished the chief state mine inspector.

All employees shall be educated to report and receive first aid treatment of all injuries, no matter how trivial they shall be. This rule is made to obviate frequent infections that develop from wounds that are trivial in character. This first aid treatment of wounds of trivial character shall be in the hands of a trained first aid man, if more convenient than the mine surgeon, but the first aid attendant shall promptly refer any accident to the mine surgeon when he deems it of sufficiently severe character. [1927 c 306 § 18; RRS § 8856-7. Formerly RCW 78.34.440.]

Chapter 78.44 SURFACE MINING

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78.44.920	Effective date—1970 ex.s. c 64.
78.44.930	Severability—1970 ex.s. c 64.

Reviser's note: Chapter 64, Laws of 1970 ex.s. has been codified as a new chapter in Title 78 RCW "Mines, Minerals, and Petroleum" although section 1 of the act states "Sections 2 through 25 of this act shall constitute a new chapter in Title 76 RCW." As the act pertains solely to surface mining, the change in placement has been made to preserve the subject matter arrangement of the code.

78.44.010 Legislative finding. The legislature recognizes that the extraction of minerals by surface mining is a basic and essential activity making an important contribution to the economic well-being of the state and nation. At the same time, proper reclamation of surface mined land is necessary to prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety, and property rights of the citizens of the state. Surface mining takes place in diverse areas where the geologic, topographic, climatic, biologic, and social conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals required by our society without disturbing the surface of the earth and producing waste materials, and the very character of many types of surface mining operations precludes complete restoration of the land to its original condition. However, the legislature finds that reclamation of surface mined lands as provided in this chapter will allow the mining of valuable minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land. [1970 ex.s. c 64 § 2.]

78.44.020 Purpose. The purpose of this chapter is to provide that the usefulness, productivity, and scenic values of all lands and waters involved in surface mining within the state will receive the greatest practical degree of protection and restoration. It is a further purpose of this chapter to provide a means of cooperation between private and governmental entities in carrying this chapter into effect. [1970 ex.s. c 64 § 3.]

78.44.030 Definitions. As used in this chapter, unless the context indicates otherwise:

(1) "Surface mining" shall mean all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and including the production of surface mining refuse. For the purpose of this chapter surface mining shall mean those operations described in this paragraph from which more than ten thousand tons of minerals are produced or more than two acres of land is newly disturbed within a period of twelve consecutive calendar months. Surface mining

shall not include excavation or removal of sand, gravel, clay, rock or other materials in remote areas by an owner or holder of a possessory interest in land for the primary purpose of construction or maintenance of access roads to or on such landowner's property. Surface mining shall not include excavation or grading conducted for farming, on-site road construction or other on-site construction, but shall include adjacent or off-site borrow pits except those on landowner's property for use on access roads on such property. Prospecting and exploration activities shall be included within the definition of surface mining when they are of such nature and extent as to exceed the qualifying sizes listed above or when collectively they disturb more than one acre per eight acres of land area.

(2) "Unit of surface mined area" shall mean the area of land and water covered by each operating permit that is actually newly disturbed by surface mining during each twelve-month period of time, beginning at the date of issuance of the permit, and shall comprise the area from which overburden and/or minerals have been removed, the area covered by spoil banks, and all additional areas used in surface mining operations which by virtue of such use are thereafter susceptible to excessive erosion.

(3) "Abandonment of surface mining" shall mean a cessation of surface mining, not set forth in an operator's plan of operation or by any other sufficient written notice, extending for more than six consecutive months or when, by reason of examination of the premises or by any other means, it becomes the opinion of the department of natural resources that the operation has in fact been abandoned by the operator: *Provided*, That the operator does not, within thirty days of receipt of written notification from the department of his intent to declare the operation abandoned, submit evidence to the department's satisfaction that the operation is in fact not abandoned.

(4) "Minerals" shall mean coal, clay, stone, sand, gravel, metallic ore, and any other similar solid material or substance to be excavated from natural deposits on or in the earth for commercial, industrial, or construction uses.

(5) "Overburden" shall mean the earth, rock, and other materials that lie above a natural deposit of mineral.

(6) "Surface mining refuse" shall mean all waste soil, rock, mineral, liquid, vegetation, and other material directly resulting from or displaced by the mining, cleaning, or preparation of minerals during the surface mining operations on the operating permit area, and shall include all waste materials deposited on or in the permit area from other sources.

(7) "Spoil bank" shall mean a deposit of excavated overburden or mining refuse.

(8) "Operator" shall mean any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial, including every public or governmental agency engaged in surface mining operations, whether individually, jointly, or through subsidiaries, agents, employees, or contractors.

(9) "Department" shall mean the board of natural resources.

(10) "Reclamation" shall mean the reasonable protection of all surface resources subject to disruption from surface mining and rehabilitation of the surface resources affected by surface mining. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to reestablish on a continuing basis the vegetative cover, soil stability, water conditions, and safety conditions appropriate to the intended subsequent use of the area.

(11) "Reclamation plan" shall mean the operator's written proposal, as required and approved by the department, for reclamation of the affected resources which shall include, but not be limited to:

(a) A statement of the proposed subsequent use of the land after reclamation and satisfactory evidence that all owners of a possessory interest in the land concur with this proposed use;

(b) Evidence that this subsequent use would not be illegal under local zoning regulations;

(c) Proposed practices to protect adjacent surface resources;

(d) Specifications for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and proposed method of accomplishment;

(e) Manner and type of revegetation or other surface treatment of disturbed areas;

(f) Method of prevention or elimination of conditions that will create a public nuisance, endanger public safety, damage property, or be hazardous to vegetative, animal, fish, or human life in or adjacent to the area;

(g) Method of control of contaminants and disposal of surface mining refuse;

(h) Method of diverting surface waters around the disturbed areas;

(i) Method of restoration of stream channels and stream banks to a condition minimizing erosion and siltation and other pollution;

(j) Such maps and other supporting documents as reasonably required by the department; and

(k) A time schedule for reclamation that meets the requirements of RCW 78.44.090. [1970 ex.s. c 64 § 4.]

78.44.040 Administration of chapter. The board of natural resources is charged with the administration of this chapter by utilizing the services of the department of natural resources. In order to implement the chapter's terms and provisions, the department, under the provisions of the administrative procedure act (chapter 34.04 RCW), as now or hereafter amended, may from time to time promulgate those rules and regulations necessary to carry out the purposes of this chapter. [1970 ex.s. c 64 § 5.]

78.44.050 Chapter cumulative and nonexclusive—Other laws not affected. This chapter shall not affect any of the provisions of the state fisheries laws (Title 75 RCW), the state water pollution control laws (Title 90 RCW), the state game laws (Title 77 RCW), or any

other state laws, and shall be cumulative and nonexclusive. [1970 ex.s. c 64 § 6.]

78.44.060 Investigations, research, etc.—Dissemination of information. The department shall have the authority to conduct or authorize investigations, research, experiments and demonstrations, and to collect and disseminate information relating to surface mining and reclamation of surface mined lands. [1970 ex.s. c 64 § 7.]

78.44.070 Cooperation with other agencies—Receipt and expenditure of funds. The department may cooperate with other governmental and private agencies in this state and other states and agencies of the federal government, and may reasonably reimburse them for any services the department requests that they provide. The department may also receive any federal funds, state funds and any other funds and expend them for reclamation of land affected by surface mining and for purposes enumerated in RCW 78.44.060. [1970 ex.s. c 64 § 8.]

78.44.080 Operating permits—Required—Applications. After January 1, 1971, no operator shall engage in surface mining without having first obtained an operating permit from the department. Except as otherwise permitted in this section a separate permit shall be required for each separate surface mining operation. Prior to receiving an operating permit from the department an operator must submit an application on a form provided by the department, which shall contain the following information and any other pertinent data required by the department:

(1) Name and address of the legal landowner, any purchaser of the land under a real estate contract, and the operator and, if any of these are corporations or other business entities, the names and addresses of their principal officers and resident agent for service of process;

(2) Materials to be surface mined;

(3) Type of surface mining to be performed;

(4) Expected starting date of surface mining;

(5) Anticipated termination date of the surface mining project;

(6) Expected amount of mineral to be surface mined;

(7) Maximum depth of surface mining;

(8) Size and legal description of the area that will be disturbed by surface mining. If more than ten acres will be disturbed by surface mining or, regardless of the amount of land to be disturbed, if the department finds that conditions warrant it and so requests, a map of the area to be surface mined shall be submitted. The map shall show the boundaries of the area of land which will be affected; topographic detail; the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area; location of proposed access roads to be built in conjunction with the surface mining operation; and the names of the surface and mineral owners of all lands within the surface mining area;

(9) A plan of surface mining that will provide, within limits of normal operational procedure of the industry, for completion of surface mining and associated disturbances on each segment of the area for which a permit is requested so that reclamation can be initiated at the earliest possible time on those portions of the surface mined area that will not be subject to further disturbance by the mining operation. Whenever feasible, visual screening, vegetative or otherwise, will be maintained or established on the property containing the surface mining to screen the view of the operation from public highways, public parks, and residential areas.

(10) A reclamation plan that must be acceptable to and approved by the department, except as provided in RCW 78.44.100. An operator may not depart from an approved plan without having previously obtained from the department written approval of his proposed change.

The department may adopt rules and regulations permitting an operator of more than one surface mining operation to submit a single application for a combined operating permit covering all of his surface mining operations. Such application may require detailing of information required by this section for each separate location. An operator operating under such a combined permit may submit a consolidated reclamation program covering all his operations under rules and regulations prescribed by the department, but may be required to furnish specific information relative to reclamation of any single operating area if the department determines that such is necessary to carry out the purposes of this chapter. [1970 ex.s. c 64 § 9.]

78.44.090 Reclamation plans. The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, shall, to the extent feasible, be conducted simultaneously with surface mining and in any case shall be initiated at the earliest possible time after completion or abandonment of mining on any segment of the permit area. The plan shall provide that reclamation activities shall be completed not more than two years after completion or abandonment of surface mining on each segment of the area for which a permit is requested.

A reclamation plan will be approved by the department if it adequately provides for the accomplishment of the activities specified in the definition of "reclamation plan", RCW 78.44.030(11), and meets those of the following minimum standards that are applicable:

(1) Excavations made to a depth not less than two feet below the low groundwater mark, which will result in the establishment of a lake of sufficient area and depth of water to be useful for residential, recreational, game, or wildlife purposes, shall be reclaimed in the following manner:

(a) All banks in soil, sand, gravel, and other unconsolidated materials shall be sloped to two feet below the low groundwater line at a slope no steeper than one and one-half feet horizontal to one foot vertical;

(b) Portions of solid rock banks shall be stepped or other measures be taken to permit a person to escape from the water.

(2) In all other excavations in soil, sand, gravel, and other unconsolidated materials, the side slopes and the slopes between successive benches shall be no steeper than one and one-half feet horizontal to one foot vertical for their entire length.

(3) The sides of all strip pits and open pits in rock and other consolidated materials shall be no steeper than one foot horizontal to one foot vertical, or other precautions must be taken to provide adequate safety.

(4) The slopes of quarry walls in rock or other consolidated materials shall have no prescribed angle of slope, but where a hazardous condition is created that is not indigenous to the immediate area, the quarry shall be either graded or backfilled to a slope of one foot horizontal to one foot vertical or other precautions must be taken to provide adequate safety.

(5) In strip mining operations the peaks and depressions of the spoil banks shall be reduced to a gently rolling topography which will minimize erosion and which will be in substantial conformity with the immediately surrounding land area.

(6) In no event shall any provision of this section be construed to allow stagnant water to collect or remain on the surface mined area. Suitable drainage systems shall be constructed or installed to avoid such conditions if natural drainage is not possible.

(7) All grading and backfilling shall be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the director for a supervised sanitary fill.

(8) In all types of surface mining, in order to prevent water pollution, all acid-forming surface mining refuse shall be disposed of by covering all acid-forming materials with at least two feet of clean fill. The final surface covering shall be graded so that surface water will drain away from the disposal area.

(9) Vegetative cover will be required in the reclamation plan as appropriate to the future use of the land.

(10) All surface mining that will disturb streams must comply with the requirements of the state fisheries laws (Title 75 RCW), and every application for an operating permit for such operations must have a reclamation plan that shall have been approved by the department of fisheries with regard to operations in streams as required by Title 75 RCW. [1970 ex.s. c 64 § 10.]

78.44.100 Inspections—Provisional permits—Duration of operating permits—Modification of reclamation plan—Successor operators. Upon receipt of an application for a permit, the surface mining site must be inspected by a representative of the department. Within twenty-five days of receipt of the application and reclamation plan by the department and receipt of the permit fee, the department shall either issue an operating permit to the applicant or return any incomplete or inadequate application to the applicant along with a description of the deficiencies.

Failure to act within the twenty-five day period on the reclamation plan shall not be cause for a denial of a permit. The department shall set the amount of the bond or other security required for a provisional permit governing the surface mining operation set forth in the

application. A provisional permit shall be granted pursuant to conditions prescribed by the department until a plan is approved as long as the operator complies with the bond or security requirements established by the department: *Provided, however,* That a provisional permit shall not be granted if the department considers the site unsuitable for surface mining.

If the department refuses to approve a reclamation plan in the form submitted by the operator, it shall notify the operator, in writing, stating the reasons for its refusal and listing such additional requirements to the operator's reclamation plan as are necessary for the approval of the plan by the department. Within thirty days, the operator shall either accept such additional requirements as part of the reclamation plan or file notice of appeal. If notice of appeal is filed by the operator, a provisional permit shall be granted as herein specified.

The operating permit shall be granted for the period required to mine the land covered by the plan and shall be valid until the surface mining authorized by the permit is completed or abandoned, unless the permit is suspended by the department as provided in this chapter. The operating permit shall provide that the reclamation plan may be modified, after timely notice and opportunity for hearing, at any time during the term of the permit for any of the following reasons:

- (1) To modify the requirements so that they will not conflict with existing laws;
- (2) The department determines that the previously adopted reclamation plan is clearly impossible or impracticable to implement and maintain;
- (3) The department determines that the previously adopted reclamation plan is obviously not accomplishing the intent of this chapter; or
- (4) The operator and the department mutually agree to change the reclamation plan.

When one operator succeeds to the interest of another in any uncompleted surface mining operation by sale, assignment, lease, or otherwise, the department may release the first operator from the duties imposed upon him by this chapter as to such operation: *Provided,* That both operators have complied with the requirements of this chapter and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the department shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this chapter. [1970 ex.s. c 64 § 11.]

78.44.110 Fees. The permit fees required under this chapter shall be as follows:

- (1) The basic fee for the permit shall be twenty-five dollars per permit year for each separate location, payable with submission of the application and annually thereafter with submission of the report required in RCW 78.44.130.
- (2) In addition, there shall be a five dollar per acre fee for all acreage exceeding ten acres which was newly disturbed by surface mining during the previous permit year, which acreage fee shall be paid at the time of

submission of the report required in RCW 78.44.130. [1970 ex.s. c 64 § 12.]

78.44.120 Performance bonds and other security. Upon receipt of an operating permit an operator other than a public or governmental agency shall not commence surface mining until the operator has deposited with the department an acceptable performance bond on forms prescribed and furnished by the department. This performance bond shall be a corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under the provisions of chapter 48.28 RCW and approved by the department. The bond shall be filed and maintained in an amount equal to the estimated cost of completing the reclamation plan for the area to be surface mined during the next twelve-month period and any previously surface mined area for which a permit has been issued and on which the reclamation has not been satisfactorily completed and approved. The department shall have the authority to determine the amount of the bond that shall be required, and for any reason may refuse any bond not deemed adequate. In no case shall the amount of the bond be less than one hundred dollars or more than one thousand dollars per acre or fraction thereof.

The bond shall be conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules and regulations adopted pursuant thereto.

In lieu of the surety bond required by this section the operator may file with the department a cash deposit, negotiable securities acceptable to the department, or an assignment of a savings account in a Washington bank on an assignment form prescribed by the department.

Liability under the bond shall be maintained as long as reclamation is not completed in compliance with the approved reclamation plan unless released prior thereto as hereinafter provided. Liability under the bond may be released only upon written notification from the department. Notification shall be given upon completion of compliance or acceptance by the department of a substitute bond. In no event shall the liability of the surety exceed the amount of the surety bond required by this section.

A public or governmental agency shall not be required to post a bond under the terms of this chapter.

A blanket performance bond covering two or more surface mining operations may be submitted by an operator in lieu of separate bonds for each separate operation. [1970 ex.s. c 64 § 13.]

78.44.130 Reports. Within thirty days after completion or abandonment of mining on an area under permit or within thirty days after each annual anniversary date of the operating permit, whichever is earlier, or at such later date as may be provided by department rules and regulations, and each year thereafter until reclamation is completed and approved, the operator shall file a report of activities completed during the preceding year

on a form prescribed by the department, which report shall:

- (1) Identify the operator and permit number;
- (2) Locate the operation by subdivision, section, township, and range, and with relation to the nearest town or other well known geographic feature;
- (3) Estimate acreage to be newly disturbed by surface mining in the next twelve-month period; and
- (4) Update any maps previously submitted or provide such maps as may be specifically requested by the department. Such maps shall show:
 - (a) The operating permit area;
 - (b) The unit of surface mined area;
 - (c) The area to be surface mined during the next twelve-month period;
 - (d) If completed, the date of completion of surface mining;
 - (e) If not completed, the area that will not be further disturbed by the mining operations; and
 - (f) The date of beginning, amount, and current status of reclamation performed during the previous twelve months. An operator operating under a combined operating permit may submit a single annual report, but such report shall include the data required in this section for each separate operating area. [1970 ex.s. c 64 § 14.]

78.44.140 Inspection of permit area—Deficiencies—Extension of performance periods—Performance actions by department—Recovery of expenses—Enforcement. Upon receipt of the operator's report, and at any other reasonable time the department may elect, the department shall cause the permit area to be inspected to determine if the operator has complied with the reclamation plan and the department's rules and regulations.

The operator shall proceed with reclamation as scheduled in his reclamation plan. Following any written notice by the department noting deficiencies, the operator shall commence action within thirty days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected: *Provided*, That deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws. The department may extend performance periods referred to in this section and in RCW 78.44.090, for delays clearly beyond the operator's control, but only when the operator is, in the opinion of the department, making every reasonable effort to comply.

Within thirty days after notification by the operator and when in the judgment of the department reclamation of a unit of surface mined area is properly completed, the mining operator shall be notified in writing and his bond on said area shall be released or decreased proportionately.

If reclamation of surface mined land is not proceeding in accordance with the reclamation plan and the operator has not commenced action to rectify deficiencies within thirty days after notification by the department, or if reclamation is not properly completed in conformance with the reclamation plan within two

years after completion or abandonment of surface mining on any segment of the permit area, the department is authorized, with the staff, equipment and material under his control, or by contract with others, to take such actions as are necessary for the reclamation of the surface mined areas. The department shall keep a record of all necessary expenses incurred in carrying out any project or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized.

The department shall notify the operator and his surety by order. The order shall state the amount of necessary expenses incurred by the department in reclaiming the surface mined land and a notice that the amount is due and payable to the department by the operator and the surety.

If the amount specified in the order is not paid within thirty days after receipt of the notice, the attorney general, upon request of the department, shall bring an action on behalf of the state in the superior court for Thurston county or any county in which the persons to whom the order is directed do business to recover the amount specified in the final order of the department. The surety shall be liable to the state to the extent of the bond.

The amount owed the department by the operator for the reclamation performed by the state may be recovered by a lien against the reclaimed property, which may be enforced in the same manner and with the same effect as a mechanic's lien.

In addition to the other liabilities imposed by this chapter, failure to commence action to rectify deficiencies in reclamation within thirty days after notification by the department or failure satisfactorily to complete reclamation work on any segment of the permit area within two years after completion or abandonment of surface mining on any segment of the permit area shall constitute sufficient grounds for cancellation of a permit and refusal to issue another permit to the delinquent operator until such deficiencies are corrected by the operator. [1970 ex.s. c 64 § 15.]

78.44.150 Operating without permit—Penalty. Any operator conducting surface mining within the state of Washington without a valid operating permit shall be guilty of a gross misdemeanor. Each day of operation shall constitute a separate offense. [1970 ex.s. c 64 § 16.]

78.44.160 Enjoining or stopping illegal operations. When the department finds that an operator is conducting surface mining on an area for which a valid operating permit is not in effect, or is conducting surface mining in any manner not authorized by his operating permit or by the rules and regulations adopted by the department, the department may forthwith order such operator to suspend all such operations until compliance is effected or assured to the satisfaction of the department. In the event the operator fails or declines to obey such order, the facts may be reported by the department to the attorney general. The attorney general shall forthwith take the necessary legal action to

enjoin, or otherwise cause to be stopped, such conduct of surface mining. [1970 ex.s. c 64 § 17.]

78.44.170 Appeals. Appeals from determinations made under this chapter shall be made under the provisions of the administrative procedure act (chapter 34.04 RCW), as now or hereafter amended and shall be considered a contested case within the meaning of the administrative procedure act (chapter 34.04 RCW). [1970 ex.s. c 64 § 18.]

78.44.180 Confidentiality. All reclamation plans, operators' reports and other required information under this chapter shall be for the confidential use of the department which shall by rule or regulation provide for the release thereof to proper interested persons. [1970 ex.s. c 64 § 20.]

78.44.900 Existing operations—Temporary permits. Operators of surface mines in operation on January 1, 1971 shall have ninety days thereafter to submit an application for an operating permit. Any such operator who has timely filed an application for an operating permit but for reasons beyond his control has neither received an operating permit nor had his application denied within twenty-five days after his application has been submitted as provided in RCW 78.44.080, shall have issued to him by the department a temporary operating permit, which, if the applicant is diligently pursuing his application, shall be effective until a regular operating permit is either issued or denied. [1970 ex.s. c 64 § 19.]

78.44.910 Previously mined land. This act shall not direct itself to the reclamation of land mined prior to January 1, 1971. [1970 ex.s. c 64 § 22.]

78.44.920 Effective date—1970 ex.s. c 64. This act shall become effective January 1, 1971. [1970 ex.s. c 64 § 23.]

78.44.930 Severability—1970 ex.s. c 64. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances shall not be affected. [1970 ex.s. c 64 § 24.]

Chapter 78.48 MINE TO MARKET ROADS

Sections

- 78.48.010 Commission—Members—Chairman.
- 78.48.020 Mine to market road defined.
- 78.48.030 Petition—Filing—Contents.
- 78.48.040 Action on petition by the commission.
- 78.48.050 Right of way—Construction.
- 78.48.060 Counties notified when road is completed—Maintenance.
- 78.48.080 Funds and contributions—Expenditure.

Highway commission and director of highways: Chapter 47.01 RCW.

78.48.010 Commission—Members—Chairman. For the purposes of this chapter the director of conservation and development, director of highways, and the

executive officer of the Washington state planning council, shall mean such officers as the same are now designated and exist, or such persons, officers, commissions, boards or otherwise as may succeed to their duties or to the duties of any thereof, and shall constitute the mines to market road commission. The director of the department of conservation and development shall be the chairman. [1939 c 175 § 1; RRS § 6450-25a.]

Reviser's note: The Washington state planning council was abolished by 1945 c 173 § 4, its powers and duties transferred to the director of conservation and development through the division of progress and industry development (see 1945 c 173 § 2).

As to the division of progress and industry development, see 1957 c 215 §§ 17, 18, 21 and 24 (RCW 43.21.010, 43.21.180, 43.31.170 and 43.31.180) abolishing the division and transferring its powers and duties to the department of commerce and economic development.

78.48.020 Mine to market road defined. For the purposes of this chapter a mine to market road shall be any public highway or any public trail established, located and constructed to locations of mineral deposits and of existing or potential mineral development: *Provided*, That the standard of construction upon any such mine to market road or trail shall be determined by the mine to market road commission. [1945 c 222 § 1; 1939 c 175 § 2; Rem. Supp. 1945 § 6450-25b.]

78.48.030 Petition—Filing—Contents. A written petition for the designation and establishment of a mine to market road or trail may be presented to the board of county commissioners of the county wherein such road is to be established or to the respective boards of county commissioners wherein such road is to be established if the same extends into or through two or more counties, by five or more citizens interested in the development of the mineral deposits which would be served by the proposed road. Such petition may be informal, but shall state fully the known facts pertaining to the occurrence of valuable mineral deposits in the area proposed to be served and the extent of explorations and development theretofore made and the approximate length, termini and route of the proposed road or trail. [1945 c 222 § 2; 1943 c 146 § 1; 1939 c 175 § 3; Rem. Supp. 1945 § 6450-25c.]

78.48.040 Action on petition by the commission. No mine to market road or trail shall be designated, established, located or constructed under this chapter unless and until the same shall have been petitioned for and such petition shall have been approved by the board of county commissioners of the county wherein such proposed road is situated or by the respective boards of county commissioners if said road or trail extends into more than one county, and such petition, by such board or boards, shall have been forwarded to the mines to market roads commission. The commission shall consider any petition so received and if, upon the basis of the information and statements contained in the petition and in the light of other available and pertinent facts and information, the project does not appear feasible, said commission may dismiss such petition without further or special investigations; but when said

petition and other available data and information indicate probable feasibility the director of conservation and development shall cause to be made an independent investigation as to the mineralization of the area to be served by the proposed road or trail and as to the value of such mine to market road or trail to the mining development of the state, and the director of highways shall cause to be made an independent investigation with respect to the nature and cost of construction of such mine to market road or trail. The results of such independent investigations by the two directors shall be considered by the commission, and if the commission finds that the facts indicate that the proposed mine to market road or trail is not feasible the petition shall be then dismissed with notification accordingly in writing by the commission forwarded to the board or boards of county commissioners that previously approved such petition; but when the commission finds that the investigations show feasibility and advisability the commission shall find and determine that said mine to market road or trail is feasible and will be conducive to the development of the mineral resources of the state, and that the same shall be established, and eligible for construction whenever funds therefor are or may become available as hereinafter provided and the commission shall accordingly in writing notify the board or boards of county commissioners that shall have previously approved the petition: *Provided*, That in thus establishing a mine to market road or trail the commission may in its discretion, and in the interest of feasibility, deviate from the route described in the petition. [1945 c 222 § 3; 1943 c 146 § 2; 1939 c 175 § 4; Rem. Supp. 1945 § 6450-25d.]

78.48.050 Right of way—Construction. The director of highways is hereby empowered, authorized and directed to construct mine to market roads and trails providing access to such mineral areas or centers of mining development as shall have been determined by the commission. The commission may, in its discretion, authorize such construction either by day labor or contract. The right of way for such road or trail shall be furnished by the county at its own expense. [1945 c 222 § 4; 1943 c 146 § 3; 1939 c 175 § 5; Rem. Supp. 1945 § 6450-25e.]

78.48.060 Counties notified when road is completed—Maintenance. Upon the completion of the construction of any mine to market road or trail the director of highways shall certify to the board of county commissioners of the county in which such mine to market road or trail, or any portion thereof, is located, that the same has been completed and such mine to market road or trail, or portion thereof in each such county shall then become and thereafter be a county road or trail of the county in which located, and shall thereafter be maintained, kept up, repaired and protected by such county in the same manner as all other county roads and from funds available for county road purposes in the county road fund. [1945 c 222 § 6; 1939 c 175 § 7; Rem. Supp. 1945 § 6450-25g.]

78.48.080 Funds and contributions—Expenditure.

In the event that any funds are made available from the federal government or from any department, division or agency thereof for the purpose of paying the cost of the establishment, location and construction of any mine to market road or trail, such funds shall be received by the state treasurer of the state of Washington and deposited by him in the motor vehicle fund: *Provided*, That the director of highways and all officers, departments, boards or commissions of the state of Washington shall have the power to receive and use such federal funds in such manner as the federal agency making such contributions shall provide. In the event that any private individual, firm, corporation or association may desire to make any contribution to aid in the cost of construction of any mine to market road or trail, such contribution shall be made in lawful money of the United States by delivery to the state treasurer and by him deposited to the credit of the motor vehicle fund for the use of the director of highways to defray the cost of establishment, location and construction of the mine to market road or trail, or that portion thereof for which such contribution was made.

Whenever, upon completion of a mine to market road or trail, there shall be an unexpended balance of a contribution received from a private individual, firm, corporation or association in aid of the construction of such mine to market road or trail the director of highways shall prepare a voucher to the state treasurer for the issuance of a warrant in favor of the donor against the motor vehicle fund in the amount of such unexpended balance.

In the event that any private individual, firm, corporation or association desires to donate labor, machinery or equipment in aid of the location or construction of a mine to market road or trail the director of highways is authorized to accept and use the same. [1973 c 106 § 36; 1951 c 49 § 1; 1945 c 222 § 5; 1943 c 146 § 4; 1939 c 175 § 6; Rem. Supp. 1945 § 6450-25f.]

Chapter 78.52

OIL AND GAS CONSERVATION

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Franchises on county roads and bridges: Chapter 36.55 RCW.

Gas and oil pipe lines: Chapter 81.88 RCW.

Interstate oil compact commission, governor may join: RCW 43.06.015.

78.52.001 Declaration of purpose. It is hereby declared to be in the public interest to foster, encourage, and promote the development, production, and utilization of oil and gas in the state in such manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such manner as to assure that the maximum economic recovery of oil and gas may be obtained and the rights of owners thereof fully protected; and to encourage, authorize, and provide for cycling, recycling, pressure maintenance and secondary recovery operations in order that the maximum economic recovery of oil and gas

may be obtained to the end that landowners, royalty owners, producers, and the general public may realize and enjoy the greatest possible benefits from these vital resources. [1951 c 146 § 1.]

78.52.010 Definitions. For the purposes of this chapter, unless the text otherwise requires, the following terms shall have the following meanings:

(1) "Waste" in addition to its ordinary meaning, shall mean "physical waste" as that term is generally understood in the petroleum industry, and shall include:

(a) The inefficient, excessive or improper use of, or unnecessary dissipation of, reservoir energy; and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well in a manner which results, or tends to result in reducing the quantity of oil or gas to be recovered from any pool in this state under operations conducted in accordance with good oil field engineering practices;

(b) The inefficient above ground storage of oil; and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well in a manner causing, or tending to cause, unnecessary or excessive surface loss or destruction of oil or gas;

(c) Producing oil or gas in such manner as to cause unnecessary water channeling, or coning;

(d) The operation of an oil well with an inefficient gas-oil ratio;

(e) The drowning with water of any pool or part thereof capable of producing oil or gas, except insofar as, and to the extent, authorized by the committee hereunder;

(f) Underground waste;

(g) The creation of unnecessary fire hazards;

(h) The escape into the open air, from a well producing oil or gas, of gas in excess of the amount which is reasonably necessary in the efficient development or production of the well;

(i) The use of gas for the manufacture of carbon black, except as provided in section 15 hereof; and

(j) Production of oil and gas in excess of the reasonable market demand.

(2) "Oil" shall mean crude petroleum oil, and any other hydrocarbons regardless of gravity, which are produced at the well in liquid form by ordinary production methods or which are the result of condensation of gaseous hydrocarbons before or after they leave the reservoir, other than gas produced in association with oil and commonly known as wet gas.

(3) "Gas" shall mean all natural gas and other fluid or gaseous hydrocarbons not defined as oil in subsection (2) above, including wet gas, dry gas and residue gas as those terms are generally understood in the petroleum industry.

(4) "Pool" shall mean an underground reservoir proven to contain a common accumulation of oil or gas, or both. Each zone of a general structure which is completely separated from any other zone in the structure is covered by the term "pool" as herein used.

(5) "Field" shall mean the general area which is underlain by at least one pool and shall include the underground reservoir or reservoirs containing oil or gas,

or both. The words "field" and "pool" mean the same thing when only one underground reservoir is involved; however, "field", unlike "pool", may relate to two or more pools.

(6) "Lessee" shall mean the lessee under an oil and gas lease, or the owner of any land or mineral rights who conducts or carries on any oil and gas development, exploration and operation thereon, or any person so operating for himself or others.

(7) "Person" shall mean any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or representative of any kind. [1951 c 146 § 3.]

Reviser's note: The reference to "section 15 hereof" (RCW 78.52-.130) seems erroneous. The use of gas for manufacture of carbon black is provided for in 1951 c 146 § 16 (RCW 78.52.140).

78.52.020 Conservation committee created. There is hereby created and established an oil and gas conservation committee, which shall consist of the governor, the land commissioner, and the lieutenant governor together with the director of the department of ecology and the state treasurer. The governor shall be the chairman of this committee, and the commissioner of public lands shall be its executive secretary. The members of the committee may act through designated agents or deputies for the purpose of carrying out the provisions of this chapter. [1971 ex.s. c 180 § 7; 1961 c 300 § 7; 1951 c 146 § 4.]

Severability—Short title—Construction—1971 ex.s. c 180: See RCW 90.48.903, 90.48.906, and 90.48.907.

78.52.025 Hearings in general. The committee shall hold hearings at such times and places as may be found by the committee to be necessary to carry out its duties. The committee may establish its own rules for the conduct of public hearings. [1951 c 146 § 5. Formerly RCW 78.52.060.]

78.52.030 Employment of personnel. The committee shall have the authority and it shall be its duty to employ all personnel necessary to carry out the provisions of this chapter. [1951 c 146 § 6.]

78.52.031 Conduct of hearings—Evidence. The committee shall have the power to summon witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by it. No person shall be excused from attending and testifying, or from producing books, papers, and records before the committee or a court, or from obedience to the subpoena of the committee or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture: *Provided*, That nothing herein contained shall be construed as requiring any person to produce any books, papers, or records, or to testify in response to any inquiry not pertinent to some question lawfully before such committee or court for determination. No person shall be subjected to criminal prosecution or to any penalty or

forfeiture for or on account of any transaction, matter, or thing concerning which, in spite of his objection, he may be required to testify or produce evidence, documentary or otherwise before the committee or court, or in obedience to its subpoena: *Provided, however*, That no person testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. [1951 c 146 § 7. Formerly RCW 78.52.080.]

78.52.033 Failure of witness to attend or testify—Contempt. In case of failure or refusal on the part of any person to comply with a subpoena issued by the committee or in case of the refusal of any witness to testify as to any matter regarding which he may be interrogated, any superior court in the state, upon the application of the committee, may compel him to comply with such subpoena, and to attend before the committee and produce such records, books, and documents for examination, and to give his testimony and shall have the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein. [1951 c 146 § 8. Formerly RCW 78.52.090.]

78.52.035 Attorney for committee. The attorney general shall be the attorney for the committee: *Provided*, That in cases of emergency, the committee may call upon the prosecuting attorney of the county where the action is to be brought, or defended, to represent the committee until such time as the attorney general may take charge of the litigation. [1951 c 146 § 9. Formerly RCW 78.52.110.]

78.52.040 Duty and powers of committee—In general. It shall be the duty of the committee to administer and enforce the provisions of this chapter, and all rules, regulations and orders promulgated hereunder, and the committee is hereby vested with jurisdiction, power and authority, over all persons and property, public and private, necessary to enforce effectively such duty. [1951 c 146 § 10.]

78.52.050 Rules, regulations and orders—Time and place of hearing. The committee shall have authority to make such reasonable rules, regulations and orders as may be necessary from time to time for the proper administration and enforcement of this chapter. Unless otherwise required by law or by this chapter or by rules of procedure made under this chapter, the committee may make such rules, regulations and orders, after notice, as the basis therefor. The notice may be given by publication in some newspaper of general circulation in the state in a manner and form which may be prescribed by the committee by general rule. The public hearing shall be at the time and in the manner and at the place prescribed by the committee, and any person having any interest in the subject matter of the hearing shall be entitled to be heard. [1951 c 146 § 11.]

78.52.070 Hearing upon petition for hearing—

Time for action. Any interested person shall have the right to have the committee call a hearing for the purpose of taking action with respect to any matter within the jurisdiction of the committee by filing a verified written petition therefor, which shall state in substance the matter and reasons for and nature of the action requested. Upon receipt of any such request the committee, if in its judgment a hearing is warranted and justifiable, shall promptly call a hearing thereon, and after such hearing, and with all convenient speed, and in any event within twenty days after the conclusion of such hearing, shall take such action with regard to the subject matter thereof as it may deem appropriate. [1951 c 146 § 12.]

78.52.100 Records—Copies as evidence—Copies to be furnished. All rules, regulations and orders of the committee, all petitions, copies of all notices and actions with affidavits of posting, mailing or publications pertaining thereto, all findings of fact, and transcripts of all hearings shall be in writing and shall be entered in full by the committee in the permanent official records of the office of the commissioner of public lands and shall be open for inspection at all times during reasonable office hours. A copy of any rule, regulation, order, or other official records of the committee, certified by the executive secretary of the committee, shall be received in evidence in all courts of this state with the same effect as the original. The committee is hereby required to furnish for the public on request all rules, regulations, orders, and amendments thereof. [1951 c 146 § 13.]

78.52.120 Drilling permit required. Any person desiring or proposing to drill any well in search of oil or gas, before commencing the drilling of any such well, shall notify the committee upon such form as the committee may prescribe, and shall pay to the state treasurer a fee of one hundred dollars for each such permit. The drilling of any well is prohibited until such notice is given and such fee has been paid as herein provided. The committee shall have the authority to prescribe that the said form indicate the exact location of such well, the name and address of the owner, operator, contractor, driller, and any other person responsible for the conduct of drilling operations, the proposed depth of the well, the elevation of the well above sea level, and such other relevant and reasonable information as the committee may deem necessary or convenient to effectuate the purposes of this chapter. [1951 c 146 § 14.]

78.52.125 Environmental impact statement required when drilling affects surface waters of the state—Drilling may be denied, when. Any person desiring or proposing to drill any well in search of oil or gas, when such drilling would be conducted through or under any surface waters of the state, shall prepare and submit an environmental impact statement upon such form as the department of ecology shall prescribe at least one hundred and twenty days prior to commencing the drilling of any such well. Within ninety days after receipt of

such environmental statement the department of ecology shall prepare and submit to each member of the committee a report examining the potential environmental impact of the proposed well and recommendations for committee action thereon. If after consideration of the report the committee determines that the proposed well is likely to have a substantial environmental impact the drilling permit for such well may be denied.

The committee shall require sufficient safeguards to minimize the hazards of pollution of all surface and ground waters of the state. If safeguards acceptable to the committee cannot be provided the drilling permit shall be denied. [1971 ex.s. c 180 § 8.]

Severability—Short title—Construction—1971 ex.s. c 180: See RCW 90.48.903, 90.48.906, and 90.48.907.

Coastal protection fund: RCW 90.48.390 and 90.48.400.

Definitions: RCW 90.48.315.

Rules and regulations: RCW 90.48.380, 90.48.410 and 90.48.907.

78.52.130 Waste prohibited. Waste of oil and gas, as defined in this chapter, is prohibited. [1951 c 146 § 15.]

78.52.140 Carbon black and carbon products—Permit required. The use of gas from a well producing gas only, or from a well which is primarily a gas well, for the manufacture of carbon black or similar products predominantly carbon, is declared to constitute waste prima facie, and such gas well shall not be used for any such purpose unless it is clearly shown, at a public hearing to be held by the committee, on application of the person desiring to use such gas, that waste would not take place by the use of such gas for the purpose or purposes applied for, and that gas which would otherwise be lost is not available for such purpose or purposes, and that the gas to be used cannot be used for a more beneficial purpose, such as for light or fuel purposes, except at prohibitive cost, and that it would be in the public interest to grant such permit. If the committee finds that the applicant has clearly shown a right to use such gas for the purpose or purposes applied for, it shall issue a permit upon such terms and conditions as may be found necessary in order to permit the use of the gas, and at the same time require compliance with the intent of this section. [1951 c 146 § 16.]

78.52.150 Investigations authorized. The committee has authority, and it shall be its duty, to make such investigations as it may deem proper to determine whether waste exists or is imminent or whether other facts exist which justify action by the committee. [1951 c 146 § 17.]

78.52.160 Powers of committee with respect to petroleum industry. The committee has authority to require:

- (1) Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the transportation or refining of oil or gas;
- (2) The making and filing of well logs, directional surveys, and reports on well locations, drilling, and production;

(3) The drilling, casing, operating, and plugging of wells in such manner as to prevent the escape of oil or gas out of one pool into another, the intrusion of water into an oil or gas pool, the pollution of fresh water supplies by oil, gas, or salt water, and to prevent blow-outs, cavings, seepages, and fires;

(4) The furnishing of a reasonable bond with good and sufficient surety, conditioned on the performance of the duty to plug each dry or abandoned well;

(5) The operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios;

(6) That the production of oil and gas from wells be accurately measured by such means and upon such standards as may be prescribed by the committee, and that every person who produces, sells, purchases, acquires, stores, transports, refines, or processes oil or gas in this state shall keep and maintain within this state complete and accurate records thereof, which records shall be available for examination by the committee or its agents at all reasonable times, and that every such person file with the committee such reports as it may prescribe with respect to such oil or gas; and

(7) Compliance with each and all of the applicable statutes of this state and the rules and regulations of the supervisor of forestry for the prevention of unreasonable loss or damage to timber. [1951 c 146 § 18.]

78.52.170 Committee may regulate production, storage, transportation and refining operations. The committee shall have further authority to regulate:

(1) The drilling, producing, spacing, and plugging of wells, and all other operations for the production of oil or gas;

(2) The shooting and chemical treatment of wells;

(3) Operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations;

(4) Disposal of salt water and oil field brines;

(5) The storage, processing, and refining of natural gas and oil produced within this state. [1951 c 146 § 19.]

78.52.180 Production may be restricted. The committee has authority to limit and to prorate oil or gas produced in this state and to restrict future production of oil and gas from any pool in such amounts as will offset and compensate for any production determined by the committee to be in excess of or in violation of "oil allowable" or "gas allowable" as defined herein. [1951 c 146 § 20.]

78.52.190 Classification of wells authorized. The committee also has authority to classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter. [1951 c 146 § 21.]

78.52.200 Well spacing areas—Authorized. When necessary to prevent waste, to avoid the drilling of unnecessary wells, or to protect correlative rights, the committee shall establish well spacing areas. Well spacing areas when established shall be of uniform size and shape for the entire pool, except that when found to be

necessary for any of the purposes above-mentioned, the committee is authorized to divide any pool into zones and establish well spacing areas for each zone, which areas may differ in size and shape from those established in any other zone. [1951 c 146 § 22.]

78.52.210 Well spacing areas—Size and shape. The size and the shape of well spacing areas are to be such as will result in the efficient and economical development of the pool as a whole, and the size shall not be smaller than the maximum area that can be efficiently drained by one well, nor greater than forty acres for oil or one hundred sixty acres for gas only. [1951 c 146 § 23.]

78.52.220 Well spacing areas—Location of well. An order establishing well spacing areas for a pool shall specify the size and shape of each area and the location of the permitted well thereon in accordance with a reasonable uniform spacing plan. Upon application and after hearing, if the committee finds that a well drilled at the prescribed location would not produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such well, the committee is authorized to enter an order permitting the well to be drilled at a location other than that prescribed by such spacing order; however, the committee shall include in the order suitable provisions to prevent the production from the well spacing area of more than its just and equitable share of the oil and gas in the pool. [1951 c 146 § 24.]

78.52.230 Well spacing areas—Order must cover entire pool—Modifications. An order establishing well spacing areas for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the committee from time to time to include additional areas determined to be underlaid by such pool. When the committee determines that it is necessary for the prevention of waste, or to avoid the drilling of unnecessary wells, or to protect correlative rights, an order establishing well spacing areas in a pool may be modified by the committee to increase the size of well spacing areas in the pool or any zone thereof, or to permit the drilling of additional wells on a reasonably uniform plan in the pool, or any zone thereof. [1951 c 146 § 25.]

78.52.240 Well spacing areas—Combining of interests. When two or more separately owned tracts are embraced within a well spacing area, or when there are separately owned interests in all or a part of the well spacing area, then the owners and lessees thereof may combine their interests for the development and operation of the well spacing area. In the absence of this voluntary combination, the committee, upon the application of any interested person, shall enter an order combining all interests in the well spacing area for the development and operation thereof. Each such combining order shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and that afford to the owner of each

tract or interest in the well spacing area the opportunity to recover or receive, without unnecessary expense or penalty, his just and equitable share. Operations incident to the drilling of a well upon any portion of a well spacing area covered by a combining order shall be deemed, for all purposes, the conduct of such operations upon each separately owned tract in the well spacing area by the several owners thereof. That portion of the production allocated to each tract included in a well spacing area covered by a combining order shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon. [1951 c 146 § 26.]

78.52.250 Combined interests in well in well spacing area—Allocation of costs. Each such combining order shall make provision for the drilling and operation of a well on the well spacing area, and for the payment of the reasonable actual cost thereof by the owners of interests in the well spacing area, plus a reasonable charge for supervision. In the event of any dispute as to such costs the committee shall determine the proper costs. If one or more of the owners shall drill and operate, or pay the expenses of drilling and operating the well for the benefit of others, then, the owner or owners so drilling or operating shall have a lien on the share of production from the well spacing area accruing to the interest of each of the other owners for the payment of his proportionate share of such expenses. Such lien shall be only against the said share of production, and not against any interest, estate, equity or title of any of the said other owners. All the oil and gas subject to the lien shall be marketed and sold and the proceeds applied in payment of the expenses secured by such lien. [1951 c 146 § 27.]

78.52.260 "Wildcat" or "exploratory" well data confidential. Whenever the committee shall require the making and filing of well logs, directional surveys or reports on the drilling of, subsurface conditions found in, or reports with respect to the substance produced, or capable of being produced from, a "wildcat" or "exploratory" well, as those terms are used in the petroleum industry, such logs, surveys, reports or information shall be kept confidential by the committee for a period of one year, if at the time of filing such logs, surveys, reports or other information, the owner, lessee, or operator of such well requests that such information be kept confidential: *Provided, however,* That the committee shall have the right to divulge or use such information in a public hearing or suit when it is necessary for the enforcement of the provisions of this chapter or any rule, regulation or order made hereunder. [1951 c 146 § 28.]

78.52.270 Limitation of production to "oil allowable"—Proration. Whenever the total amount of oil which all of the pools in this state can currently produce in accordance with good operating practices, exceeds the amount reasonably required to meet the reasonable market demand, the committee shall limit the oil which may be currently produced in this state to

an amount, designated the "oil allowable". The committee shall then prorate this "oil allowable" among the pools on a reasonable basis, avoiding undue discrimination among the pools, and so that waste will be prevented. In determining the "oil allowable", and in prorating such "oil allowable" among the pools in the state, the committee shall take into account the producing conditions and other relevant facts with respect to such pools, including the separate needs for oil and gas, and separate needs for oil of particular kinds or qualities, and shall formulate rules setting forth standards or a program for the determination of the "oil allowable", and shall prorate the "oil allowable" in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or program shall be applied to such pools or areas so that as far as practicable a uniform program will be followed: *Provided, however,* That if the amount prorated to a pool as its share of the "oil allowable" is in excess of the amount which the pool can efficiently produce currently, then the committee shall prorate to such pool the maximum amount which can be efficiently produced currently without waste. [1951 c 146 § 29.]

78.52.280 Determining market demand—No undue discrimination in proration of "allowable". The committee shall not be required to determine the reasonable market demand applicable to any single pool of oil except in relation to all pools producing oil of similar kind and quality and in relation to the reasonable market demand. The committee shall prorate the "allowable" in such manner as will prevent undue discrimination against any pool or area in favor of another or others resulting from selective buying or nomination by purchasers. [1951 c 146 § 30.]

78.52.290 Limitation of production to "gas allowable"—Proration. Whenever the total amount of gas which all of the pools in this state can currently produce in accordance with good operating practice exceeds the amount reasonably required to meet the reasonable market demand, the committee shall limit the gas which may be currently produced to an amount, designated as the "gas allowable", which will not exceed the reasonable market demand for gas. The committee shall then prorate the "gas allowable" among the pools on a reasonable basis, avoiding undue discrimination among the pools, and so that waste will be prevented, giving due consideration to location of pipe lines, cost of interconnecting such pipe lines, and other pertinent factors, and insofar as applicable, the provisions of RCW 78.52.270 shall be followed in determining the "gas allowable" and in prorating such "gas allowable" among the pools therein: *Provided, however,* That in determining the reasonable market demand for gas as between pools, the committee shall give due regard to the fact that gas produced from oil pools is to be regulated in a manner which will protect the reasonable use of gas energy for oil production and promote the most or maximum efficient recovery of oil from such pools. [1951 c 146 § 31.]

78.52.300 Limitation of gas production from one pool. Whenever the total amount of gas which may be currently produced from all of the pools in this state has not been limited as hereinabove provided, and the available production from any one pool containing gas only is in excess of the reasonable market demand or available transportation facilities for gas from such pool, the committee shall limit the production of gas from such pool to that amount which does not exceed the reasonable market demand or transportation facilities for gas from such pool. [1951 c 146 § 32.]

78.52.310 Proration of allowable production in pool—Publication of orders—Emergency orders. Whenever the committee limits the total amount of oil or gas which may be produced from any pool to an amount less than that which the pool could produce if no restrictions were imposed (whether incidental to, or without, a limitation of the total amount of oil which may be produced in the state) the committee shall prorate the allowable production for the pool among the producers in the pool on a reasonable basis, so that each producer will have opportunity to produce or receive his just and equitable share, subject to the reasonable necessities for the prevention of waste, giving where reasonable, under the circumstances, to each pool with small wells of settled production, allowable production which prevents the premature abandonment of wells in the pool.

All orders establishing the "oil allowable" and "gas allowable" for this state, and all orders prorating such allowables as herein provided, and any changes thereof, for any month or period shall be issued by the committee on or before the fifteenth day of the month preceding the month for which such orders are to be effective, and such orders shall be immediately published in some newspaper of general circulation printed in Olympia, Washington. No orders establishing such allowables, or prorating such allowables, or any changes thereof, shall be issued without first having a hearing, after notice, as provided in this chapter: *Provided, however,* When in the judgment of the committee, an emergency requiring immediate action is found to exist, the committee is authorized to issue an emergency order under this section which shall have the same effect and validity as if a hearing with respect to the same had been held after due notice. The emergency order permitted by this subsection shall remain in force no longer than thirty days, and in any event it shall expire when the order made after due notice and hearing with respect to the subject matter of the emergency order becomes effective. [1951 c 146 § 33.]

78.52.320 Compliance with limitation or proration required. Whenever the production of oil or gas in this state or any pool therein is limited and the "oil allowable" or "gas allowable" is established and prorated by the committee as provided in RCW 78.52.310, no person shall thereafter produce from any well, pool, lease or property more than the production which is prorated thereto. [1951 c 146 § 34.]

78.52.330 Unit operation of separately owned tracts. To assist in the development of oil and gas in this state and to further the purposes of this chapter, the persons owning interests in separate tracts of land, may validly agree to integrate their interests and manage, operate and develop their land as a unit, subject to the approval of the committee. [1951 c 146 § 35.]

78.52.340 Unit operation for conduct of secondary recovery operations. When in the judgment of the committee production in any pool or field shall have declined to a point where secondary recovery operations are advisable or necessary, if the lessees or owners of oil and gas rights cannot agree on a unit plan of operation covering the pool or field as a whole, the committee may, after a hearing as hereinafter provided, enter and enforce an order for the unit or cooperative development and operation of a field or pool, in connection with the conduct of repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, or any other method of operation, including water floods. [1951 c 146 § 36.]

78.52.350 Unit plan—Requisites in general. Any unit plan shall:

- (1) Define and identify the unit area to be included in, and subject to, the unit plan;
- (2) Contain a statement of the nature and purpose of the operation contemplated;
- (3) Provide for the efficient unitized management or control of the operation of the unit area for the recovery and production of oil and gas from the pool affected. Under such a plan the actual operations within the unit area may be carried on, in whole or in part, by the several lessees of land within the unit area, or may be conducted by some particular lessee of a lease in the unit area, who is designated as unit operator, dependent upon what is most beneficial or expedient. The designation of the unit operator shall be by vote of the lessees of land in the unit area in a manner provided in the unit plan; and
- (4) Provide for the division of interest and formula for the apportionment and allocation, among and to each of the several separately-owned tracts within the unit area, of a fair, equitable and reasonable share of the production from the pool. [1951 c 146 § 38.]

78.52.360 Unit plan—Provisions for financing and allocation of costs. Any unit plan shall provide for the manner in which the development and operation of the unit area shall or may be financed and the basis, terms and conditions on which the cost thereof shall be apportioned among, and assessed against, the tracts and interests made chargeable therewith, including a detailed accounting procedure governing all charges and credits incident to such operations. Upon and subject to such terms and conditions as to time and rate of interest as may be fair to all concerned, reasonable provisions shall be made in the unit plan for carrying or otherwise financing lessees who are unable to meet their

financial obligations under the unit plan. The share of such financing properly and proportionately chargeable to any such lessee may become a lien on such lessee's share of production under the unit plan, but in no event shall any such lien be or operate against any interest, estate, equity or title of any such lessee, but only against the said share of production. [1951 c 146 § 39.]

78.52.370 Unit plan—Additional provisions. Any unit plan shall also:

(1) Provide for the procedure and basis upon which wells, equipment and other properties of the several lessees within the unit area are to be taken over and used, including the method of arriving at the compensation therefor, or of otherwise proportionately equalizing or adjusting the investment of the several lessees in the unit area as of the effective date of the unit plan;

(2) Provide a fair and equitable plan for the general over-all management and control of the unit area. Each lessee of land within the unit area shall be entitled to representation in the general over-all management and control of the unit development and operations. Voting shall be on a fair, equitable, and reasonable basis as provided in such unit plan;

(3) Provide that the obligations or liabilities of the lessees shall at all times be several and not joint or collective, and in no event shall a lessee be chargeable with, obligated, or liable, directly or indirectly, for more than the amount of expenses apportioned or otherwise assessed or charged to his interest in his separately-owned tract pursuant to the unit plan;

(4) Provide that each lessee shall own and take in kind his share of the production allocated under the unit plan;

(5) Provide for possible amendments to the unit plan; and

(6) Contain such other provisions as the lessees may deem appropriate for the prevention of waste or protection of all interested parties. [1951 c 146 § 40.]

78.52.380 Unit plan proposal—Hearing required. All petitions or proposals for the creation of a unit and approval of a unit plan shall be set for public hearing by the committee, and the date of the first of such hearings shall be not less than thirty days, nor more than sixty days, from the filing of such petition or proposal. [1951 c 146 § 41.]

78.52.390 Unit plan proposal—Notice of hearing. Notice of the time and place of the first of such hearings, and a description of the lands within the unit area, shall be given by publication and in the following manner:

(1) Publication on three consecutive days, at least ten days prior to said hearing, in some newspaper of general circulation printed in Olympia, Washington, and by publication on three consecutive days, at least ten days prior to said hearing, in some newspaper of general circulation in the county, or in each county, if there be more than one, in which the lands embraced in the petition are situated; and

(2) Mailing a postal card notice to the last known post office address as shown by the record of the county treasurer in the county where the land is located not less than thirty days prior to the date of the first of such hearings to all persons owning interests in the land within the unit area. [1951 c 146 § 42.]

78.52.400 Unit plan proposal—Hearing, notice of continuance on recess. If the hearing cannot be completed on the first day set for such hearing, the committee shall, before adjournment or recess thereof, publicly announce the time and place at which the hearing will be continued, and such announcement will serve as sufficient notice of such continuance without recourse to the form of public notice as provided above in this section. [1951 c 146 § 43.]

Reviser's note: The reference to "this section" seems erroneous. Public notice is provided for in the preceding section (RCW 78.52.390).

78.52.410 Unit plan proposal—Findings and order on hearing. Within fifteen days after completion of the public hearings held in accordance with the procedure and requirements herein provided, the committee shall determine from the facts and evidence presented to it:

(1) Whether the unit plan, attached to such petition, or proposal, for the management and operation of a pool is proper, feasible, equitable, reasonably necessary, is for the common good and will result in the general advantage of the lessees and owners of the oil and gas rights within the pool; will prevent waste; will distribute the oil, and gas produced therewith, recovered from the pool, on a fair and equitable basis; and will increase the ultimate recovery of oil from the pool, and that the estimated additional oil to be recovered from the pool under the unit plan will exceed the estimated additional expense, if any, of the conduction of operations under such unit plan;

(2) Whether the unit plan, attached to such petition, or proposal, for the management and operation of a pool containing gas only is proper, feasible, equitable, reasonably necessary, is for the common good, and will result in the general advantage of the lessees and owners of the gas rights within the pool; will prevent waste; and will distribute the gas recovered from the pool on a fair and equitable basis.

If it is the determination of the committee that the unit plan will accomplish the requirements set forth above, it shall make a finding to that effect, and enter an order creating the unit, and designating the date when such unit plan shall become effective.

If it is the determination of the committee that the unit plan will not accomplish the requirements set forth above, it shall make a finding to that effect, reciting, in detail, the considerations upon which such finding is based. [1951 c 146 § 44.]

78.52.420 Unit plan proposal—Leases and contracts conformed to unit plan. From and after the date designated by the committee that a unit plan shall be effective, oil and gas leases upon lands within the unit area, or other contracts pertaining to the development

thereof, shall be conformed to meet the provisions and requirements of such unit plan, but otherwise to remain in full force and effect. Operations carried on under and in accordance with such unit plan shall be regarded and considered as fulfillment of and compliance with all of the provisions, covenants, and conditions, expressed or implied, of the several oil and gas leases upon lands within the unit area, or other contracts pertaining to the development thereof, insofar as said leases, or other contracts, may relate to the pool or field subject to such unit plan. The amount of production apportioned and allocated, pursuant to said unit plan, to each separately-owned tract within the unit area, and only that amount, regardless of the location of the well within the unit area from which it may be produced, and regardless of whether it be more or less than the amount of production from the well, if any, on each separately-owned tract, shall for all intents, uses and purposes be regarded as production from such separately-owned tract, and lessees shall not be obligated to pay royalties or make other payments, required by the oil and gas leases or other contracts affecting each such separately-owned tract, on production in excess of that amount apportioned and allocated to such separately-owned tract pursuant to the unit plan. [1951 c 146 § 45.]

78.52.430 Operations contrary to unit plan prohibited. From and after the date designated by the committee that a unit plan shall become effective, the operation of any well producing from the pool within the area subject to said unit plan, by persons other than persons acting under the authority of the unit plan, or except in the manner and to the extent provided in such unit plan, shall be unlawful and is hereby prohibited. [1951 c 146 § 46.]

78.52.440 Amendment of unit plan. In any proceeding hereunder in which an order is entered creating a unit and approving a unit plan, the committee shall retain jurisdiction thereof and of all parties in interest for the purpose of amending the unit plan from time to time whenever by reason of changed conditions or otherwise for good cause shown it is made to appear that such amendment is necessary or proper. Any amendment to a unit plan made pursuant hereto shall be effective prospectively only from and after the date on which the order providing for such amendment shall become final. The procedure for any such amendment, including the filing of a petition, the giving of notice and conduct of hearings, shall be the same as that required for the creation of a unit in the same instance, insofar as applicable. [1951 c 146 § 47.]

78.52.450 Participation of public lands in unit plan. The commissioner of public lands, or other officer or board having the control and management of state land, and the proper board or officer of any political, municipal, or other subdivision or agency of the state having control and management of public lands, may, on behalf of the state or of such political, municipal, or other subdivision or agency thereof, with respect to land and oil and gas rights subject to the control and

management of such respective body, board or officer, consent to and participate in any unit plan. [1951 c 146 § 48.]

78.52.460 Unit plan not deemed monopolistic. No plan for the operation of a field or pool of oil or gas as a unit, either whole or in part, created or approved by the committee hereunder shall be held to violate any of the statutes of this state prohibiting monopolies or acts, arrangements, agreements, contracts, combinations or conspiracies in restraint of trade or commerce. [1951 c 146 § 49.]

78.52.470 Objections to rule, regulation, order—Hearing required—Modification. Any person adversely affected by any rule, regulation or order of the committee may, within thirty days from the effective date of such rule, regulation or order, apply for a hearing with respect to any matter determined therein; the application shall be granted or denied by the committee within fifteen days from the date the same shall be filed, and if the hearing is not granted within fifteen days it shall be taken as denied. If a hearing is granted, the matter shall be set for hearing by the committee within thirty days after the same is submitted. No cause for action arising out of any rule, regulation or order of the committee shall accrue in any court to any party unless such party makes application for a hearing as herein provided. Such application shall set forth specifically the ground on which the applicant considers such rule, regulation or order to be unlawful or unreasonable. No party shall, in any court, urge or rely upon any ground not set forth in said application. A rule, regulation, or order made in conformity to a decision resulting from a hearing which abrogates[,] changes or modifies the original rule, regulation or order, shall have the same force and effect as an original. [1951 c 146 § 50.]

78.52.480 Appeal from rule, regulation, order—Rights of committee. In proceedings for review of a rule, regulation or order of the committee, the committee shall be a party to the proceedings and shall have all rights and privileges granted by this chapter to any other party to such proceedings. [1951 c 146 § 51.]

78.52.490 Appeal—How taken. Within thirty days after the application for a hearing is denied, or if the application is granted, then within thirty days after the rendition of the decision on the hearing, the applicant may apply to the superior court of Thurston county for a review of such rule, regulation, order or decision. The application for review shall be filed in the office of the clerk of the superior court of Thurston county and shall specifically state the grounds for review upon which the applicant relies and shall designate the rule, regulation, order or decision sought to be reviewed. The applicant shall immediately serve a certified copy of said application upon the executive secretary of the committee who shall immediately notify all parties who appeared in the proceedings before the committee that such application for review has been filed. [1951 c 146 § 52.]

78.52.500 Transcript—Filing—Scope of review—Appeal. The executive secretary, upon receipt of said copy of the application for review, shall forthwith transmit to the clerk of the superior court in which the application for review has been filed, a certified transcript of all pleadings, applications, proceedings, rules, regulations or orders of the committee and of the evidence heard by the committee on the hearings of the matter or cause: *Provided*, That the parties, with the consent and approval of the committee may stipulate in writing that only certain portions of the record be transcribed. Said proceedings for review shall be for the purpose of having the lawfulness or reasonableness of the rule, regulation, order or decision of the committee, inquired into and determined, and the superior court hearing said cause shall have the power to vacate or set aside such rule, regulation, order or decision on the ground that it is unlawful or unreasonable. After the said transcript is filed, the judge of said superior court may, on his motion, or on application of any parties interested therein, make an order fixing a time for the filing of the transcript and briefs and shall fix a day for the hearing of the cause. All proceedings under this section shall have precedence in any court in which they may be pending. An appeal shall lie to the supreme court or the court of appeals of this state from orders, judgments and decisions made by the superior court. The procedure upon the trial of such proceedings in the superior court and upon appeal to the supreme court or the court of appeals of this state shall be the same as in other civil actions, except as herein provided. [1971 c 81 § 138; 1951 c 146 § 53.]

78.52.510 Hearing the appeal—New or additional evidence—Effect of affirmation. No new or additional evidence may be introduced upon the trial of any proceedings for review under the provisions of this chapter, but the cause shall be heard upon the questions of fact and law presented by the evidence and exhibits introduced before the committee and certified by it: *Provided*, That if it is shown to the satisfaction of the court that any party to the proceeding has additional material evidence which could not, by the exercise of due diligence, have been produced at the hearing before the committee, or which for some good reason it was prevented from producing at such hearing, or if upon the trial of the proceeding the court shall find the committee has erroneously refused to admit or consider material evidence offered by any party at the hearing before the committee the court may, in its discretion, stay the proceedings and make an order directing the committee to hear and consider such evidence. In such cases, the committee shall immediately hear and consider such evidence and make an order modifying, setting aside or affirming its former rule, regulation, order or decision. A transcript of the additional evidence and the rule, regulation, order or decision of the committee as modified or affirmed, shall immediately be certified and forwarded to the clerk of the superior court in which such proceeding is pending, and said superior court shall on the motion of any interested party, order the trial to proceed upon the transcript as supplemented, so as to

enable the court to properly determine if the rule, regulation, order or decision of the committee as originally made, or as modified, is in any respect unlawful or unreasonable. If the rule, regulation, order or decision of the committee is affirmed by the court it shall continue in force and effect as if no appeal were pending. [1951 c 146 § 54.]

78.52.520 Stay, pending appeal. The filing or pendency of the application for review provided for in this chapter shall not in itself stay or suspend the operation of any rule, regulation or order, but the court, in its discretion, may stay or suspend, in whole or in part, the operation of the rule, regulation or order of the committee. [1951 c 146 § 55.]

78.52.530 Violations—Injunctions. Whenever it shall appear that any person is violating any provisions of this chapter, or any rule, regulation or order made by the committee hereunder, and if the committee cannot, without litigation, effectively prevent further violation, the committee may bring suit in the name of the state against such person in the superior court in the county of the residence of the defendant, or in the county of the residence of any defendant if there be more than one defendant, or in the county where the violation is alleged to have occurred, to restrain such person from continuing such violation. In such suit the committee may without bond obtain injunctions prohibitory and mandatory, including temporary restraining orders and preliminary injunctions, as the facts may warrant. [1951 c 146 § 56.]

78.52.540 Violations—Injunctions by private party. In the event the committee should fail to bring suit within thirty days to enjoin any apparent violation of this chapter, or of any rule, regulation or order made by the committee hereunder, then any person or party in interest adversely affected by such violation, who has requested the committee in writing to sue, may, to prevent any or further violation, bring suit for that purpose in the superior court of any county where the committee could have instituted such suit. If, in such suit, the court should hold that injunctive relief should be granted, then the state shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the state had at all times been the complainant. [1951 c 146 § 57.]

78.52.550 Violations—Penalty. Every person who shall violate or knowingly aid and abet the violation of this chapter or any valid orders, rules and regulations issued thereunder, or who fails to perform any act which is herein made his duty to perform, shall be guilty of a gross misdemeanor. [1951 c 146 § 58.]

78.52.900 Short title. This chapter shall be known as the "Oil and Gas Conservation Act." [1951 c 146 § 2.]

78.52.910 Construction—1951 c 146. It is intended that the provisions of this chapter shall be liberally construed to accomplish the purposes authorized and

provided for, or intended to be provided for by this chapter. [1951 c 146 § 59.]

78.52.920 Severability—1951 c 146. If any part or parts of this chapter, or the application thereof to any person or circumstances be held to be unconstitutional, such invalidity shall not affect the validity of the remaining portions of this chapter, or the application thereof to other persons or circumstances. The legislature hereby declares that it would have passed the remaining parts of this chapter if it had known that said invalid part or parts thereof would be declared unconstitutional. [1951 c 146 § 60.]

TITLE 79

PUBLIC LANDS

Chapters

- 79.01 Public lands act.
- 79.08 General provisions.
- 79.12 Sales and leases of public lands and materials.
- 79.14 Oil and gas leases on state lands.
- 79.16 Tidelands, shorelands, and harbor areas.
- 79.20 Oyster lands.
- 79.24 Capitol building lands.
- 79.28 Lieu lands.
- 79.36 Easements over public lands.
- 79.38 Access roads.
- 79.40 Trespass.
- 79.44 Assessments against public lands.
- 79.48 Reclamation of arid lands under Carey Act.
- 79.60 Sustained yield cooperative agreements.
- 79.64 Funds for managing and administering lands.
- 79.68 Multiple use concept in management and administration of state-owned lands.
- 79.70 Natural area preserves.
- 79.76 Geothermal resources.

Reviser's note: Appendix following Title 79 RCW: Subject Index—Public Land Acts of Special or Historical Nature—Not Codified in RCW.

The powers and duties of most of the public agencies mentioned in Title 79 RCW have been transferred, at least in part, to the department of natural resources, see chapter 43.30 RCW (chapter 38, Laws of 1957). The purpose of said chapter, as provided in RCW 43.30.010, is "to provide for more effective and efficient management of the forest and land resources in the state by consolidating into a department of natural resources certain powers, duties and functions of the division of forestry of the department of conservation and development, the board of state land commissioners, the state forest board, all state sustained yield forest committees, director of conservation and development, state capitol committee, director of licenses, secretary of state, tax commission and commissioner of public lands".

The division of forestry of the department of conservation and development, the board of state land commissioners, the state forest board and the state sustained yield forest committees, were abolished in 1957; see RCW 43.30.070 (1957 c 38 § 7).

Access to state timber: Chapter 76.16 RCW.

Acquisition, disposition of state highway property: Chapter 47.12 RCW.

Actions against state: Chapter 492 RCW.

Boundaries and plats, generally: Title 58 RCW.

Bridges, obstructions in navigable waters: Chapter 88.28 RCW.

Christmas trees: Chapter 47.40 RCW, RCW 76.12.120.

Columbia Basin division: RCW 43.27A.080.

Commissioner of public lands: State Constitution Art. 3 § 23; chapter 43.12 RCW.

Commissioner of public lands may be abolished: State Constitution Art. 3 § 25 (Amendment 31).

Compact with the United States: State Constitution Art. 26.

Contracts with United States as to highway property: Chapter 47.08 RCW.

Conveyance of real property by public bodies—Recording: RCW 65.08.095.

County lands, generally: Chapter 36.34 RCW.

Coyote getters—Use in control of coyotes: RCW 9.41.185.

Cutting, destroying trees on state lands without authority: RCW 76.04.397.

Declaratory judgments: Chapter 7.24 RCW.

Diking and drainage, improvement districts, benefit to public land: RCW 85.08.370.

Donation law, conflicting claims: RCW 7.28.280.

Ejectment, quiet title: Chapter 7.28 RCW.

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9).

Eminent domain by state: Chapter 8.04 RCW.

Escheats: Chapter 11.08 RCW.

Extensions of streets over tidelands: State Constitution Art. 15 § 3.

Federal areas, general cession of jurisdiction: Chapter 37.04 RCW.

Federal areas, jurisdiction in special cases: Chapter 37.08 RCW.

Federal funds for forest management: RCW 76.01.040, 76.01.050.

Firewood on state lands: Chapter 76.20 RCW.

Flood control districts may include public lands: Chapter 86.09 RCW.

Forest roads, county: RCW 36.82.140.

Forests and forest products: Title 76 RCW.

Funds for the support of common schools, source: State Constitution Art. 9 § 3.

Governmental lands, exemption from taxation: State Constitution Art. 7 § 1 (Amendment 14).

Grazing on state-owned game land: RCW 77.12.410.

Harbor line commission: State Constitution Art. 15 § 1 (Amendment 15).

Harbor lines, relocation: RCW 79.01.424.

Highway building on East Capitol site: Chapter 47.02 RCW.

Highways: Title 47 RCW.

Indians and Indian lands: Chapter 37.12 RCW.

Insect pests and plant diseases: Chapter 17.24 RCW.

Intergovernmental disposition of property: Chapter 39.33 RCW.

Irrigation districts may include public land: Chapter 87.03 RCW.

Land inspectors: Chapter 79.01 RCW.

Lease of state-owned fresh water harbor areas: Chapter 53.32 RCW.

Lease of unnecessary lands by director of agriculture: RCW 15.04.090.

Leases of public lands for underground storage of natural gas: RCW 80.40.060.

Lien of taxes: Chapter 84.60 RCW.

Liens, generally: Title 60 RCW.

Limitation on levies: State Constitution Art. 7 § 2 (Amendment 59).

Malicious mischief, injury to property: Chapter 9.61 RCW.

Marine recreation land act: Chapter 43.99 RCW.

Mines, minerals and oils: Title 78 RCW.

Nuisances, generally: Chapters 7.48, 9.66 RCW.

Oil and gas unit plan, participation of public lands: RCW 78.52.450.

Parks and recreation: Chapter 43.51 RCW.

Permanent school fund, investment: State Constitution Art. 16 § 5 (Amendment 1).

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Public shooting grounds: Chapter 77.40 RCW.
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Restraint on disposition of certain areas bordering harbor lines: State Constitution Art. 15 § 1 (Amendment 15).
River, harbor improvements: Chapter 88.32 RCW.
Sale of other than state forest lands: RCW 76.01.010.
School and granted lands, amount offered, platting: State Constitution Art. 16 § 4.
School and granted lands, disposition: State Constitution Art. 16 § 1.
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Sewer improvement district, benefit to public land: RCW 85.08.370.
State agency for surveys and maps: Chapter 58.24 RCW.
State boundaries: State Constitution Art. 24 § 1.
State lands subject to easements for removal of materials: RCW 79.01.312, 79.36.230.
Streets over tidelands: RCW 35.21.230 through 35.21.250.
Tidelands, declaration of state ownership: State Constitution Art. 17 § 1.
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Toll logging roads: Chapter 76.24 RCW.
Trespass: Chapters 9.83, 64.12 RCW.
United States reclamation areas, state lands in: Chapter 89.12 RCW.
Use of state land for game purposes: RCW 77.12.360-77.12.400.
Weed districts may include public lands: Chapter 17.04 RCW.
Wharves, docks, leasing and maintenance: State Constitution Art. 15 § 2.
Wharves and landings: Chapter 88.24 RCW.
Washington coordinate system: Chapter 58.20 RCW.
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**Chapter 79.01
PUBLIC LANDS ACT**

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Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see reviser's note following Title 79 RCW digest.

Accreted lands, seashore conservation area, jurisdiction and powers: RCW 43.51.685.

Multiple use concept in management and administration of state-owned lands: Chapter 79.68 RCW.

Participation in development of data bank: RCW 44.40.060.

State trust lands—Withdrawal—Revocation or modification of withdrawal when used for recreational purposes—Board to determine most beneficial use in accordance with agency policy: RCW 79.08.1078.

79.01.004 "Public lands", "state lands". Public lands of the state of Washington are lands belonging to or held in trust by the state, which are not devoted to or reserved for a particular use by law, and include state lands, tidelands, shorelands and harbor areas as herein-after defined, and the beds of navigable waters belonging to the state.

Whenever used in this chapter the term "state lands" shall mean and include:

School lands, that is, lands held in trust for the support of the common schools;

University lands, that is, lands held in trust for university purposes;

Agricultural college lands, that is, lands held in trust for the use and support of agricultural colleges;

Scientific school lands, that is, lands held in trust for the establishment and maintenance of a scientific school;

Normal school lands, that is, lands held in trust for state normal schools;

Capitol building lands, that is, lands held in trust for the purpose of erecting public buildings at the state capital for legislative, executive and judicial purposes;

Institutional lands, that is, lands held in trust for state charitable, educational, penal and reformatory institutions; and

All public lands of the state, except tidelands, shorelands, harbor areas and the beds of navigable waters. [1927 c 255 § 1; RRS § 7797-1. Prior: 1911 c 36 § 1; 1907 c 256 § 1; 1897 c 89 §§ 4, 5; 1895 c 178 §§ 1, 2. Formerly RCW 79.04.010.]

79.01.008 "Outer harbor line". Whenever used in this chapter the term "outer harbor line" shall mean a line located and established in navigable waters as provided in section 1 of article 15 of the state Constitution, beyond which the state shall never sell or lease any rights whatever. [1927 c 255 § 2; RRS § 7797-2. Prior: 1911 c 36 § 1; 1897 c 89 § 4; 1895 c 178 § 1. Formerly RCW 79.04.020.]

79.01.012 "Harbor area". Whenever used in this chapter the term "harbor area" shall mean the area of navigable tidal waters determined as provided in section 1 of article 15 of the state Constitution, which shall be forever reserved for landings, wharves, streets and other conveniences of navigation and commerce. [1927 c 255 § 3; RRS § 7797-3. Prior: 1911 c 36 § 1; 1897 c 89 § 4; 1895 c 178 § 1. Formerly RCW 79.04.030.]

79.01.016 "Inner harbor line". Whenever used in this chapter the term "inner harbor line" shall mean a line located and established in navigable tidal waters between the line of ordinary high tide and the outer harbor line and constituting the inner boundary of the harbor area. [1927 c 255 § 4; RRS § 7797-4. Formerly RCW 79.04.040.]

79.01.020 "First class tidelands". Whenever used in this chapter the term "first class tidelands" shall mean the beds and shores of navigable tidal waters belonging to the state, lying within or in front of the corporate

limits of any city, or within one mile thereof upon either side and between the line of ordinary high tide and the inner harbor line, and within two miles of the corporate limits on either side and between the line of ordinary high tide and the line of extreme low tide. [1927 c 255 § 5; RRS § 7797-5. Prior: 1897 c 89 § 39; 1895 c 178 § 52. Formerly RCW 79.04.050.]

79.01.024 "Second class tidelands". Whenever used in this chapter the term "second class tidelands" shall mean public lands belonging to the state over which the tide ebbs and flows outside of and more than two miles from the corporate limits of any city, from the line of ordinary high tide to the line of extreme low tide. [1927 c 255 § 6; RRS § 7797-6. Prior: 1897 c 89 § 39; 1895 c 178 § 52. Formerly RCW 79.04.060.]

79.01.028 "First class shorelands". Whenever used in this chapter the term "first class shorelands" shall mean public lands belonging to the state bordering on the shores of a navigable lake or river not subject to tidal flow, between the line of ordinary high water and the line of navigability and within or in front of the corporate limits of any city or within two miles thereof upon either side. [1927 c 255 § 7; RRS § 7797-7. Prior: 1897 c 89 § 39; 1895 c 178 § 52. Formerly RCW 79.04.070.]

79.01.032 "Second class shorelands". Whenever used in this chapter the term "second class shorelands" shall mean public lands belonging to the state bordering on the shores of a navigable lake or river not subject to tidal flow, between the line of ordinary high water and the line of navigability and more than two miles from the corporate limits of any city. [1927 c 255 § 8; RRS § 7797-8. Prior: 1897 c 89 § 39; 1895 c 178 § 52. Formerly RCW 79.04.080.]

79.01.036 "Improvements". Whenever used in this chapter the term "improvements" when referring to public lands belonging to the state shall mean anything considered a fixture in law placed upon or attached to such lands, or any change made in their previous condition that has added value to the lands. [1927 c 255 § 9; RRS § 7797-9. Prior: 1897 c 89 § 5. Formerly RCW 79.04.090.]

79.01.038 "Valuable materials". "Valuable materials." Whenever used in this title the term "valuable materials" when referring to public lands belonging to the state means any product or material on said lands, such as forest products, forage or agricultural crops, stone, gravel, sand, peat, and all other materials of value except mineral, coal, petroleum, and gas as provided for under chapter 79.01 RCW. [1959 c 257 § 1.]

79.01.040 Board of state land commissioners. The commissioner of public lands, the secretary of state, the state treasurer, the attorney general and the superintendent of public instruction shall constitute the board of state land commissioners, of which the commissioner of public lands shall be chairman, and a clerk in the office of the commissioner of public lands, to be appointed by

the chairman. shall be secretary. [1941 c 217 § 1; 1927 c 255 § 10; Rem. Supp. 1941 § 7797-10. Formerly RCW 43.65.010.]

79.01.044 Harbor line commission. The board of state land commissioners shall constitute the commission provided for in section 1 of article XV of the state Constitution, to locate and establish harbor lines beyond which the state shall never sell or lease any rights whatever, and to determine the width of the harbor area between such harbor lines and the line of ordinary high tide, which area shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce. [1927 c 255 § 11; RRS § 7797-11. Formerly RCW 43.65.040, part.]

79.01.048 Board of appraisers. The board of state land commissioners shall constitute the board of appraisers provided for in section 2 of article XVI of the state Constitution, to, before the sale of any lands granted to the state for educational purposes, appraise the value of such lands less the improvements thereon. [1927 c 255 § 12; RRS § 7797-12. Formerly RCW 43.65.030.]

79.01.052 Land commissioners—Office—Records—Rules and regulations. The board of state land commissioners shall have its office and keep its records in the office of the commissioner of public lands, and shall keep a full and complete record of its proceedings in separate records, one relating to the establishment of harbor lines and the determination of harbor areas, and one relating to the appraisal of lands granted for educational purposes, and the board shall have the power, from time to time, to make and enforce rules and regulations for the carrying out of the provisions of this chapter relating to its duties not inconsistent with law. [1927 c 255 § 13; RRS § 7797-13. Formerly RCW 43.65.020.]

79.01.056 Commissioner of public lands—Deputy—Appointment—Powers—Oath. The commissioner of public lands shall have the power to appoint an assistant, who shall be deputy commissioner of public lands with power to perform any act or duty relating to the office of the commissioner, and, in case of vacancy by death or resignation of the commissioner, shall perform the duties of the office until the vacancy is filled, and shall act as chief clerk in the office of the commissioner of public lands, and, before entering upon his duties, shall take, subscribe and file in the office of the secretary of state the oath of office required by law of state officers. [1927 c 255 § 14; RRS § 7797-14. Prior: 1903 c 33 § 1; RRS § 7815. Formerly RCW 43.12.020.]

79.01.060 Auditors and cashiers—Inspectors—Other assistants. The commissioner of public lands shall have the power to appoint an auditor and cashier, and an assistant auditor and cashier, and to appoint and employ such number of state land inspectors, who shall be citizens of the state of Washington familiar with the

work of inspecting and appraising lands, and such number of engineers, draftsmen, clerks and other assistants, as he may deem necessary for the performance of the duties of his office. [1927 c 255 § 15; RRS § 7797-15. Formerly RCW 43.12.030.]

79.01.064 Official bonds. The commissioner of public lands and his appointees shall enter into good and sufficient surety company bonds as required by law, in the following sums: Commissioner of public lands, fifty thousand dollars; auditor and cashier, twenty thousand dollars; assistant auditor and cashier, ten thousand dollars; each state land inspector, five thousand dollars; and other appointees in such sum as may be fixed in the manner provided by law. [1927 c 255 § 16; RRS § 7797-16. Prior: 1907 c 119 §§ 1, 2; RRS §§ 7816, 7817. Formerly RCW 43.12.040.]

79.01.068 Land inspectors—Compensation—Oaths. The compensation of a state land inspector shall not exceed seven dollars per diem for the time actually employed, and necessary expenses, which shall be submitted to the commissioner of public lands in an itemized and verified account to be approved by him.

Each state land inspector shall, before entering upon his duties, take and subscribe and file in the office of the secretary of state, an oath in substance as follows: "I ----- do solemnly swear that I will well and truly perform the duties of state land inspector in the inspection and appraisal of lands to be selected by, or belonging to, or held in trust by the state of Washington, to the best of my knowledge and ability; that I will personally and carefully examine each parcel or tract of land assigned to me for inspection, and a full and complete report make, as to each tract inspected, of every material fact connected with the location, condition and character of said land, and my estimate of the value thereof, and the amount and estimated value of all timber, or other valuable material, and all improvements thereon, when directed by the commissioner of public lands; that I am not, nor will I become, interested directly or indirectly in the sale, lease or purchase of said lands; that I will not communicate or disclose to any person other than the commissioner of public lands, or his deputy, or the members of the board of state land commissioners, any information in relation to the location, condition, character or value of any lands inspected by me, or the timber or other valuable material, or the improvements thereon; that in the performance of my duties as state land inspector I will in all respects act according to the best of my knowledge and ability, and will protect the interests of the state of Washington." [1927 c 255 § 17; RRS § 7797-17. Prior: (i) 1907 c 256 § 2; RRS § 7836. (ii) 1897 c 89 §§ 6, 8; RRS § 7838. Formerly RCW 43.12.050.]

79.01.072 False statements—Penalty. If any state land inspector shall knowingly or wilfully make any false statement in any report of inspection of lands, or any false estimate of the value of lands inspected or the timber or other valuable materials or improvements thereon, or shall knowingly or wilfully divulge anything

or give any information in regard to lands inspected by him, other than to the commissioner of public lands, the deputy commissioner of public lands, or the board of state land commissioners, he shall forthwith be removed from office, and shall be deemed guilty of a felony and in such case it shall be the duty of the commissioner of public lands and of the members of the board of state land commissioners, to report all facts within their knowledge to the proper prosecuting officer to the end that prosecution for the offense may be had. [1927 c 255 § 18; RRS § 7797-18. Formerly RCW 43.12.060.]

79.01.076 Selection to complete uncompleted grants.

So long as any grant of lands by the United States to the state of Washington, for any purpose, or as lieu or indemnity lands therefor, remains incomplete, the commissioner of public lands shall, from time to time, cause the records in his office and in the United States land offices, to be examined for the purpose of ascertaining what of the unappropriated lands of the United States are open to selection, and whether any thereof may be of sufficient value and so situated as to warrant their selection as state lands, and in that case may cause the same to be inspected and appraised by one or more state land inspectors, and a full report made thereon by the smallest legal subdivisions of forty acres each, classifying such lands into grazing, farming and timbered lands, and estimating the value of each tract inspected and the quantity and value of all valuable material thereon, and in the case of timbered lands the amount and value of the standing timber thereon, and the estimated value of such lands after the timber is removed, which report shall be made as amply and expeditiously as possible on blanks to be furnished by the commissioner of public lands for that purpose, under the oath of the inspector to the effect that he has personally examined the tracts mentioned in each forty acres thereof, and that said report and appraisement is made from such personal examination, and is, to the best of affiant's knowledge and belief, true and correct, and that the lands are not occupied by any bona fide settler.

The commissioner of public lands shall select such unappropriated lands as he shall deem advisable, and do all things necessary under the laws of the United States to vest title thereto in the state, and shall assign lands of equal value, as near as may be, to the various uncompleted grants. [1927 c 255 § 19; RRS § 7797-19. Prior: 1897 c 89 §§ 5, 7, 9, 10. Formerly RCW 79.08.050.]

Lieu lands: Chapter 79.28 RCW.

State land inspectors: RCW 43.12.030 through 43.12.060.

79.01.080 Relinquishment on failure or rejection of selection. In case any person interested in any tract of land heretofore selected by the territory of Washington or any officer, board or agent thereof or by the state of Washington or any officer, board or agent thereof or which may be hereafter selected by the state of Washington or the commissioner of public lands, in pursuance to any grant of public lands made by the United States to the territory or state of Washington for any purpose or upon any trust whatever, the selection

of which has failed or been rejected or shall fail or shall be rejected for any reason, shall request it, the commissioner of public lands shall have the authority and power on behalf of the state to relinquish to the United States such tract of land. [1927 c 255 § 20; RRS § 7797-20. Prior: 1899 c 63 § 1. Formerly RCW 79.08.060.]

79.01.084 Appraisement, sale and lease of state lands—Blank forms of applications. The commissioner of public lands shall cause to be prepared, and furnish to applicants, blank forms of applications for the appraisement, and purchase of any state lands, and the purchase of tide or shore lands, and the purchase of timber, fallen timber, stone, gravel or other valuable materials situated thereon, and the lease of state lands, tidelands, shorelands and harbor areas which forms shall contain such instructions as will inform and aid intending applicants in making applications. [1959 c 257 § 2; 1927 c 255 § 21; RRS § 7797-21. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.08.040.]

79.01.088 Who may purchase or lease—Application—Deposit. Any person desiring to purchase any state lands, or to purchase any tide or shore lands, or to purchase any timber, fallen timber, stone, gravel or other valuable materials situated on state, tide or shore lands, or to lease any state, tide or shore lands, or harbor areas, shall file in the office of the commissioner of public lands an application, on the proper form and in case of application for the purchase of lands, or for the purchase of timber, fallen timber, stone, gravel or other valuable materials, shall deposit with the application not less than ten cents per acre for the land or material applied for, but in no case less than ten dollars, and in case of application for lease for any purpose, except mining of valuable minerals or coal, or extraction of petroleum or gas, shall deposit the sum of ten dollars, which deposit shall be returned to the applicant in case the land or materials applied for is sold, or the land or area leased, when offered pursuant to the application, but in case the land or material is not sold, or the land or area not leased, by reason of the failure of the applicant to bid the appraised value, or the fixed rental thereof, when the same is offered, the deposit shall be forfeited to the state and paid into the state treasury to the credit of the general fund. [1967 c 163 § 4; 1959 c 257 § 3; 1927 c 255 § 22; RRS § 7797-22. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.12.010.]

1967 act adopted to implement Amendment 42—Severability—1967 c 163: See notes following RCW 64.16.005.

Alien land law: Chapter 64.16 RCW.

79.01.092 Inspection and appraisal—Minimum price of educational lands. When in the judgment of the department of natural resources, a sufficient number of applications for the appraisement and sale, or the lease, for any lawful purpose, excepting mining of valuable minerals or coal, or extraction of petroleum or gas, of state lands, have been received, the department shall

cause each tract of land so applied for to be inspected by one or more state land inspectors as to its character, topography, agricultural and grazing qualities, timber, coal, mineral, stone, gravel or other valuable material, the distance from any city or town, railroad, river, irrigation canal, ditch or other waterway, and a full report thereof to be made to the department, together with the inspector's judgment as to the present and prospective value, or rental value, as the case may be. In case of an application to purchase land granted to the state for educational purposes, the department shall submit said report together with all other information in the records of the office of the department of natural resources concerning the land applied for, to the board of natural resources, which board shall fix the value per acre of each lot, block, subdivision or tract proposed to be sold in one parcel, which value shall be not less than ten dollars per acre. In case of applications to purchase state lands, other than lands granted to the state for educational purposes and capitol building lands, the department shall appraise and fix the value thereof. In case of applications for the lease of state lands, for any lawful purposes other than that of mining for valuable minerals or coal, or extraction of petroleum or gas, the department shall fix the rental value thereof, and shall fix the limit of the value of the improvements that may be placed upon said land by any lessee of the state, and may, in case the land is leased, at any time during the life of the lease, extend the limit of value of the improvements that may be placed upon the land covered by the lease, if he deems it advisable and for the best interest of the state, by written order which shall be filed with the lease in the department of natural resources, and a copy mailed to the lessee at his last known post office address, and upon the expiration of such lease the department, shall not appraise said improvements in an amount exceeding the limit so fixed by the department: *Provided*, That the board of natural resources, in considering the management of individual tracts of state lands, shall include in their consideration of the financial benefits that may accrue to the particular beneficiary of such trust land any increased financial benefits that the beneficiary may receive from direct and indirect state and local taxes, including improvement in values resulting from private development and the local taxation benefits therefrom, if the property were to be sold into private ownership. [1967 ex.s. c 78 § 3; 1959 c 257 § 4; 1941 c 217 § 2; 1935 c 136 § 1; 1927 c 255 § 23; Rem. Supp. 1941 § 7797-23. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.12.020.]

79.01.094 Powers of board over lands granted to state for educational purposes. The board of state land commissioners shall exercise general supervision and control over the sale or lease for any purpose of land granted to the state for educational purposes and also over the sale of timber, fallen timber, stone, gravel and all other valuable materials situated thereon. It shall be the duty of the commissioner of public lands, on its request, to furnish the board with all reports, data and information

in the records of his office pertaining to any such proposed sale or lease, and the board of state land commissioners shall have power, if it deems it advisable, to order that any particular sale or lease of such land or valuable materials be held in abeyance pending further inspection and report. The board may cause such further inspection and report of land or materials involved in any proposed sale or lease to be made and for that purpose shall have power to employ its own inspectors, cruisers and other technical assistants. Upon the basis of such further inspection and report the board shall determine whether or not, and the terms upon which, the proposed sale or lease shall be consummated. [1941 c 217 § 3; Rem. Supp. 1941 § 7797-23A. Formerly RCW 43.65.060.]

79.01.095 Economic analysis of state lands held in trust—Scope—Use. Periodically at intervals to be determined by the board of natural resources, the commissioner of public lands shall cause an economic analysis to be made of those state lands held in trust, where the nature of the trust makes maximization of the economic return to the beneficiaries of income from state lands the prime objective. The analysis shall be by specific tracts, or where such tracts are of similar economic characteristics, by groupings of such tracts.

The most recently made analysis shall be considered by the department of natural resources in making decisions as to whether to sell or lease state lands, standing timber or crops thereon, or minerals therein, including but not limited to oil and gas and other hydrocarbons, rocks, gravel and sand.

The economic analysis shall include, but shall not be limited to the following criteria: (1) Present and potential sale value; (2) present and probable future returns on the investment of permanent state funds; (3) probable future inflationary or deflationary trends; (4) present and probable future income from leases or the sale of land products; and (5) present and probable future tax income derivable therefrom specifically including additional state, local and other tax revenues from potential private development of land currently used primarily for grazing and other similar low priority use; such private development would include, but not be limited to, development as irrigated agricultural land. [1969 ex.s. c 131 § 1.]

79.01.096 Maximum and minimum areas subject to sale or lease—Exception—Approval by legislature or regents—Duration of leases. Not more than one hundred and sixty acres of any land granted to the state by the United States shall be offered for sale in one parcel and no university lands shall be offered for sale except by legislative directive or with the consent of the board of regents of the University of Washington.

Any land granted to the state by the United States may be sold or leased for any lawful purpose in such minimum areas as may be fixed by the department of natural resources.

Except as otherwise provided in RCW 79.01.770, upon the application of a school district or any institution of higher education for the purchase or lease of

lands granted to the state by the United States, the department of natural resources may offer such land for sale or lease to such school district or institution of higher education in such maximum acreage as it may determine, consideration being given upon application of a school district to school site criteria established by the state board of education: *Provided*, That in the event the department thereafter proposes to offer such land for sale or lease at public auction such school district or institution of higher education shall have a preference right for six months from notice of such proposal to purchase or lease such land at the appraised value determined by the board of natural resources.

Land granted to the state shall not be leased for a longer period than ten years: *Provided*, That such lands may be leased for the purpose of prospecting for, developing and producing oil, gas and other hydrocarbon substances or for the mining of coal subject to the provisions of chapter 79.14 RCW and RCW 79.01.692: *Provided further*, That such lands may be leased for agricultural purposes for any period not to exceed twenty-five years: *Provided further*, That such lands may be leased for public school, college or university purposes for any period not exceeding seventy-five years: *Provided further*, That such lands may be leased for commercial, residential, business or recreational purposes for any period not exceeding fifty-five years: *And, provided further*, That, as to lands under lease on July 30, 1967 for commercial, residential, business or recreational purposes for a period of not to exceed twenty years, the lessee shall have an option for a new lease for such lands for an additional period not exceeding thirty-five years, the terms and conditions of said new lease to be fixed by the department: *And, provided further*, That if during the term of the lease of any state lands for commercial, residential, business or recreational purposes, in the opinion of the department it is in the best interest of the state so to do, the department may, on the application of the lessee, alter and amend the terms and conditions of such lease as to the types and conditions of commercial, residential, business or recreational enterprises conducted on such leased premises and the rent to be paid. [1971 ex.s. c 200 § 1; 1970 ex.s. c 46 § 1; 1967 ex.s. c 78 § 1; 1959 c 257 § 5; 1955 c 394 § 1; 1927 c 255 § 24; RRS § 7797-24. Prior: 1915 c 147 § 15; 1909 p 256 § 4; 1907 c 256 § 5; 1903 c 91 § 3; 1897 c 89 § 11. Formerly RCW 79.12.030.]

Severability—1971 ex.s. c 200: "If any provision of this 1971 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 200 § 6.] This applies to RCW 79.01.096, 79.01.770, 79.01.774, 79.01.778 and 79.01.780.

Public lands, funds for support of common school fund: State Constitution Art. 9 § 3.

School and granted lands: State Constitution Art. 16.

University of Washington: Chapter 28B.20 RCW.

79.01.100 Maximum area of urban or suburban state land—Platting. The department of natural resources shall cause all unplatted state lands, within the limits of any incorporated city or town, or within two miles of

the boundary thereof, where the valuation of such lands is found by appraisal to exceed one hundred dollars per acre, to be platted into lots and blocks, of not more than five acres in a block, before the same are offered for sale, and not more than one block shall be offered for sale in one parcel. The department of natural resources may designate or describe any such plat by name, or numeral, or as an addition to such city or town, and, upon the filing of any such plat, it shall be sufficient to describe the lands, or any portion thereof, embraced in such plat, according to the designation prescribed by the department of natural resources. Such plats shall be made in duplicate, and when properly authenticated by the department of natural resources, one copy thereof shall be filed in the office of the department and one copy in the office of the county auditor in which the lands are situated, and said auditor shall receive and file such plats without compensation or fees and make record thereof in the same manner as required by law for the filing and recording of other plats in his office.

In selling lands subject to the provisions of Article 16, section 4, of the state Constitution, the department of natural resources will be permitted to sell the land within the required land subdivision without being required to complete the construction of streets, utilities, and such similar things as may be required by any local government entity in the instance of the platting of private or other property within their area of jurisdiction: *Provided*, That no construction will be permitted on lands so sold until the purchaser or purchasers collectively comply with all of the normal requirements for platting. [1967 ex.s. c 78 § 4; 1959 c 257 § 6; 1927 c 255 § 25; RRS § 7797-25. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.12.040.]

Platting: State Constitution Art. 16 § 4.

Recording—Duties of county auditor: Chapter 65.04 RCW.

79.01.104 Vacation of plat by commissioner—

Vested rights. When, in the judgment of the commissioner of public lands the best interest of the state will be thereby promoted, the commissioner may vacate any plat or plats covering state lands, and vacate any street, alley or other public place therein situated: *Provided*, That the vacation of any such plat shall not affect the vested rights of any person or persons theretofore acquired therein. In the exercise of the foregoing power and authority to vacate the commissioner shall enter an order in the records of his office and at once forward a certified copy thereof to the county auditor of the county wherein said platted lands are located and said auditor shall cause the same to be recorded in the miscellaneous records of his office and noted on the plat by reference to the volume and page of the record. [1959 c 257 § 7; 1927 c 255 § 26; RRS § 7797-26. Prior: 1903 c 127 §§ 1, 2. Formerly RCW 79.12.050.]

79.01.108 Vacation on petition—Preference right to purchase. Whenever all the owners and other persons having a vested interest in the lands abutting on any

street, alley, or other public place, or any portion thereof, in any plat of state lands, lying outside the limits of any incorporated city or town, shall petition the commissioner of public lands therefor, the commissioner may vacate any such tract, alley or public place or part thereof and in such case all such streets, alleys or other public places or portions thereof so vacated shall be platted, appraised and sold or leased in the manner provided for the platting, appraisal and sale or lease of similar lands: *Provided*, That where the area vacated can be determined from the plat already filed it shall not be necessary to survey such area before platting the same. The owner or owners, or other persons having a vested interest in the lands abutting on any of the lots, blocks or other parcels platted upon the lands embraced within any area vacated as hereinabove provided, shall have a preference right for the period of sixty days from the date of filing such plat and the appraisal of such lots, blocks or other parcels of land in the office of the commissioner of public lands, to purchase the same at the appraised value thereof. [1959 c 257 § 8; 1927 c 255 § 27; RRS § 7797–27. Prior: 1903 c 127 § 3. Formerly RCW 79.12.060.]

79.01.112 Entire section may be inspected. Whenever application is made to purchase less than a section of unplatted state lands, the commissioner of public lands may order the inspection of the entire section or sections of which the lands applied for form a part. [1959 c 257 § 9; 1927 c 255 § 28; RRS § 7797–28. Prior: 1909 c 223 § 2. Formerly RCW 79.12.070.]

79.01.116 Date of sale limited by time of appraisal. In no case shall any lands granted to the state be offered for sale unless the same shall have been appraised by the board of natural resources within ninety days prior to the date fixed for the sale, and in no case shall any other state lands, or tide or shore lands belonging to the state, or any materials on any state lands, or on any tide or shore lands, or the beds of navigable waters belonging to the state, be offered for sale unless the same shall have been appraised by the commissioner of public lands within ninety days prior to the date fixed for the sale. [1959 c 257 § 10; 1935 c 55 § 1 (adding section 29 to 1927 c 255 in lieu of original section 29 which was vetoed); RRS § 7797–29. Prior: 1909 c 223 § 2. Formerly RCW 79.12.080.]

79.01.120 Survey to determine area subject to sale or lease. The commissioner of public lands may cause any state lands, or any tide or shore lands, to be surveyed for the purpose of ascertaining and determining the area subject to sale or lease. [1959 c 257 § 11; 1927 c 255 § 30; RRS § 7797–30. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.12.090.]

79.01.124 Timber and valuable materials sold separately, when—Materials from Columbia river, agreements with Oregon. Timber, fallen timber, stone, gravel, or other valuable material situated upon state lands, or upon tide or shore lands, or the bed of navigable waters

belonging to the state may be sold separate from the land, when in the judgment of the commissioner of public lands, it is for the best interest of the state so to sell the same, and in case the estimated amount of timber on any tract of state lands, shall exceed one million feet to the quarter section, the timber shall be sold separate from the land. When application is made for the purchase of any valuable material, situated upon state lands, or upon tide or shore lands, or the bed of navigable waters belonging to the state, the same inspection and report shall be had as upon an application for the appraisal and sale of such lands, and the commissioner of public lands shall appraise the value of the material applied for. No timber, fallen timber, stone, gravel or other valuable material, shall be sold for less than the appraised value thereof. The commissioner of public lands is authorized and empowered to confer with and enter into any agreements with the public authorities of the state of Oregon, which, in the judgment of said commissioner of public lands will assist the state of Washington and the state of Oregon in securing the maximum revenues for sand, gravel or other materials taken from the bed of the Columbia river where said river forms the boundary line between said states. [1959 c 257 § 12; 1929 c 220 § 1; 1927 c 255 § 31; RRS § 7797–31. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.100.]

Forests and forest products: Title 76 RCW.

79.01.128 Management of public lands within watershed area providing water supply for city or town—Exclusive method of condemnation by city or town for watershed purposes. In the management of public lands lying within the limits of any watershed over and through which is derived the water supply of any city or town, the department may alter its land management practices to provide water with qualities exceeding standards established for intrastate and interstate waters by the department of ecology: *Provided*, That if such alterations of management by the department reduce revenues from, increase costs of management of, or reduce the market value of public lands the city or town requesting such alterations shall fully compensate the department.

The exclusive manner, notwithstanding any provisions of the law to the contrary, for any city or town to acquire by condemnation ownership or rights in public lands for watershed purposes within the limits of any watershed over or through which is derived the water supply of any city or town shall be to petition the legislature for such authority. Nothing in this section, RCW 79.44.003 and chapter 79.68 RCW shall be construed to affect any existing rights held by third parties in the lands applied for. [1971 ex.s. c 234 § 11; 1927 c 255 § 32; RRS § 7797–32. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.110.]

Condemnation proceedings where state land involved: RCW 8.28.010.
Municipal corporation in adjoining state may condemn watershed property: RCW 8.28.050.

79.01.132 Timber and valuable materials sold separately—Lump sum sales or scale sales—Installment purchases, when—Time limit on removal—Reversion—Extensions, payment and interest—Direct sale to applicant without notice, when. When any timber, fallen timber, stone, gravel, or other valuable material on state lands is sold separate from the land, it may be sold as a lump sum sale or as a scale sale: *Provided*, That upon the request of the purchaser, any lump sum sale over five thousand dollars appraised value shall be on the installment plan. Lump sum sales under five thousand dollars appraised value shall be paid for in cash. A total deposit of not to exceed twenty-five percent of the actual or projected purchase price, but in the case of lump sum sales over five thousand dollars not less than five thousand dollars, shall be made on the day of the sale, as provided in RCW 79.01.204, and the operator shall notify the commissioner before any timber is cut and before removal or processing of any valuable materials on the sale area, at which time the commissioner may require additional payment. The amount of such additional payments shall at all times equal or exceed the value of timber cut and other valuable materials processed or removed and said deposit shall be maintained until all valuable materials are removed: *And provided further*, That said deposit may be applied as the final payment for said materials.

In all cases where timber, fallen timber, stone, gravel, or other valuable material is sold separate from the land, the same shall revert to the state if not removed from the land within the period specified in the sale contract. Said specified period shall not exceed five years from the date of the purchase thereof: *Provided*, That the specified periods in the sale contract for stone, sand, fill material, or building stone shall not exceed twenty years: *Provided further*, That in all cases where, in the judgment of the commissioner of public lands, the purchaser is acting in good faith and endeavoring to remove such materials, the commissioner may extend the time for the removal thereof for any period not exceeding twenty years from the date of purchase for the stone, sand, fill material or building stone or for a total of ten years beyond the normal termination date specified in the original sale contract for all other material, upon payment to the state of a sum to be fixed by the commissioner, based on the estimated loss of income per acre to the state resulting from the granting of the extension but in no event less than fifty dollars per extension, plus interest on the unpaid portion of the contract. The interest rate shall be fixed, from time to time, by rule adopted by the board of natural resources and shall not be less than six percent per annum. The applicable rate of interest as fixed at the date of sale and the maximum extension payment shall be set forth in the contract. The method for calculating the unpaid portion of the contract upon which such interest shall be paid by the purchaser shall be set forth in the contract. The commissioner shall pay into the state treasury all sums received for such extension and the same shall be credited to the fund to which was credited the original purchase price of the material so sold: *And provided further*, That any sale of timber, fallen timber, stone,

gravel, sand, fill material, or building stone of an appraised value of five hundred dollars or less may be sold directly to the applicant for cash at full appraised value without notice or advertising. [1971 ex.s. c 123 § 1; 1969 ex.s. c 14 § 2; 1961 c 73 § 1; 1959 c 257 § 13; 1927 c 255 § 33; RRS § 7797-33. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.120.]

79.01.133 Timber and valuable materials sold separately—"Lump sum sale" and "scale sale" defined for purposes of RCW 79.01.132. Unless a contrary meaning is clearly required by the context, as used in RCW 79.01.132 the following words shall have the meaning indicated:

(1) "Lump sum sale" shall mean "any sale offered with a single total price applying to all the material conveyed."

(2) "Scale sale" shall mean "any sale offered with per unit prices to be applied to the material conveyed." [1969 ex.s. c 14 § 1.]

79.01.134 Contract for sale of rock, gravel, etc.—Forfeiture—Royalties—Monthly reports—Audit of books. The commissioner of public lands, upon application by any person, firm or corporation, may enter into a contract providing for the sale and removal of rock, gravel, sand and silt located upon state lands or state forest lands, and providing for payment to be made therefor on a royalty basis. The issuance of a contract shall be made after public auction and such contract shall not be issued for less than the appraised value of the material.

Each application made pursuant to this section shall set forth the estimated quantity and kind of materials desired to be removed and shall be accompanied by a map or plat showing the area from which the applicant wishes to remove such materials. The commissioner of public lands may in his discretion include in any contract entered into pursuant to this section, such terms and conditions protecting the interests of the state as he may require. In each such contract the commissioner of public lands shall provide for a right of forfeiture by the state, upon a failure to operate under the contract or pay royalties for periods therein stipulated, and he may require a bond with a surety company authorized to transact a surety business in this state, as surety, to secure the performance of the terms and conditions of such contract including the payment of royalties. The right of forfeiture shall be exercised by entry of a declaration of forfeiture in the records of the commissioner of public lands. The amount of rock, gravel, sand, or silt taken under the contract shall be reported monthly by the purchaser to the commissioner of public lands and payment therefor made on the basis of the royalty provided in the contract.

The commissioner of public lands may inspect and audit books, contracts and accounts of each person removing rock, gravel, sand, or silt pursuant to any such contract and make such other investigation and secure or receive any other evidence necessary to determine

whether or not the state is being paid the full amount payable to it for the removal of such materials. [1961 c 73 § 11.]

79.01.136 Separate appraisal of improvements before sale or lease—Damages and waste to be deducted. Before any state lands are offered for sale, or before any state lands are offered for lease, the commissioner of public lands shall separately appraise all improvements situated thereon at the time of the appraisal of the land, at such sum as the improvements add to the value of the land for the purpose of selling the same, and shall also appraise all damages and waste committed or suffered upon such lands by the cutting or removal of timber, or the removal of stone, gravel or other valuable material, by the person or persons owning such improvements, or their assignors, and the damages so found shall be deducted from the appraised value of the improvements, and the balance, after deducting such damages and waste, shall be the value of the improvements upon the land, and every such appraisal shall be recorded in the office of the commissioner of public lands, but nothing herein shall be construed as affecting the right of the state to receive the full value of the land. [1959 c 257 § 14; 1927 c 255 § 34; RRS § 7797–34. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.130.]

79.01.140 Possession after termination or expiration of lease—Removal of improvements. No lessee of state lands shall remain in possession of said lands, or the improvements thereon, after the termination or expiration of his lease, without the written consent of the commissioner of public lands, and then only upon such terms and conditions as such written consent shall prescribe. At any time within sixty days after the termination or expiration of any such lease the owner of said improvements shall be entitled to remove such thereof as can be removed without injury to the land. [1927 c 255 § 35; RRS § 7797–35. Prior: 1915 c 147 § 19. Formerly RCW 79.12.140.]

79.01.144 Reversion of unremoved or unauthorized improvements—Payment by purchaser. All improvements placed upon state lands under lease, during the term of any lease, which remain upon said lands sixty days after the termination or expiration of said lease, except with the consent of the commissioner of public lands as above provided, shall become the property of the state; and be considered a part of the land upon which they are located: *Provided*, That if said lands are sold within a period of three years from the termination or expiration of said lease, then the purchaser at such sale shall pay to the owner of said improvements the appraised value thereof as determined by the commissioner of public lands. Any improvements placed upon any state lands without the written authority of the commissioner of public lands, or after the expiration of a written lease, shall become the property of the state and be considered a part of the land. [1927 c 255 § 36;

RRS § 7797–36. Prior: 1915 c 147 § 19. Formerly RCW 79.12.150.]

79.01.148 Deposit by purchaser to cover value of improvements. If the purchaser of state lands be not the owner of the improvements thereon, he shall deposit with the officer making the sale, at the time of the sale, the appraised value of such improvements, and if it be found by the commissioner of public lands that the owner of such improvements was not holding adversely to the state at the time of the making thereof, or that said improvements were placed upon the land in good faith by a lessee of the state whose lease had not been canceled or become subject to cancellation for any cause, or that such improvements were placed upon the land by mistake, then the commissioner shall pay to the owner of said improvements the sum so deposited, but if it be found that such improvements were made by persons holding or claiming adversely to the state, or by persons without license or lease from the state, or by a lessee or contract holder who had not complied with the terms of his lease or contract, or by a lessee or other person with intent to defraud the state or the intending purchaser of the land from the state, then the sum so deposited shall be paid into the state treasury to be placed to the credit of the fund into which the proceeds derived from the sale of the land should be paid: *Provided*, That when the improvements are owned by the state in accordance with the provisions of this section or have been acquired by the state by escheat or operation of law in accordance with the provisions of RCW 43.12.100, the purchaser may, in case of sale, pay for such improvements in equal annual installments at the same time, and with the same rate of interest on deferred payments, as the installments of the purchase price of the land are paid, and under such rules and regulations regarding use and care of said improvements as may be fixed by the commissioner of public lands. [1935 c 57 § 1; 1927 c 255 § 37; RRS § 7797–37. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.160.]

79.01.152 Witnesses—Compelling attendance, examination, etc., in fixing values. For the purpose of determining the value and character of lands, timber, fallen timber, stone, gravel, or other valuable material, or improvements, the board of state land commissioners, or the commissioner of public lands, as the case may be, may compel the attendance of witnesses by subpoena, at such place as the board, or the commissioner, may designate, and examine such witnesses under oath as to the value and character of such lands, or materials, or improvements and waste or damage to the land. [1927 c 255 § 38; RRS § 7797–38. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.170.]

79.01.160 Rules and regulations for removal of timber sold. All sales of timber upon state lands shall be made subject to the right, power and authority of the

commissioner of public lands to prescribe rules and regulations governing the manner of the removal of the timber with a view to the protection of the nonmerchable timber against destruction or injury by fire or from other causes, and such rules or regulations shall be binding upon the purchaser of the timber and his successors in interest and shall be enforced by the commissioner of public lands. [1959 c 257 § 15; 1927 c 255 § 40; RRS § 7797-40. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.190.]

Forest protection and practices: Chapters 76.04 and 76.08 RCW.

79.01.164 Classification of land after timber removed—Lands for reforestation reserved. When the merchantable timber has been sold and actually removed from any state lands, the commissioner of public lands may classify the land, and may reserve from any future sale such portions thereof as may be found suitable for reforestation, and in such case, the commissioner shall enter such reservation in the records in his office, and all such lands so reserved shall not thereafter be subject to sale or lease. The commissioner of public lands shall certify all such reservations for reforestation so made, to the board of natural resources, and it shall be the duty of the department of natural resources, to protect such lands, and the remaining timber thereon, from fire and to reforest the same. [1959 c 257 § 16; 1927 c 255 § 41; RRS § 7797-41. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.200.]

Reforestation: Chapter 76.12 RCW.

79.01.168 Sale of valuable materials—Inspection, appraisal without application or deposit. The commissioner of public lands may cause valuable materials on state lands to be inspected and appraised and offered for sale when authorized by the board of natural resources without an application having been filed, or deposit made, for the purchase of the same. [1961 c 73 § 2; 1959 c 257 § 17; 1927 c 255 § 42; RRS § 7797-42. Prior: 1915 c 147 § 2. Formerly RCW 79.12.210.]

79.01.172 Disposition of crops on forfeited land. Whenever the state of Washington shall become the owner of any growing crop, or crop grown upon, any state lands, by reason of the forfeiture, cancellation or termination of any contract or lease of state lands, or from any other cause, the commissioner of public lands is authorized to arrange for the harvesting, sale or other disposition of such crop in such manner as he deems for the best interest of the state, and shall pay the proceeds of any such sale into the state treasury to be credited to the same fund as the rental of the lands upon which the crop was grown would be credited. [1927 c 255 § 43; RRS § 7797-43. Prior: 1915 c 89 §§ 1, 2. Formerly RCW 79.12.240.]

79.01.176 Road material—Sale to public authorities—Disposition of proceeds. Any county, city or town desiring to purchase any stone, rock, gravel or sand upon any state lands, or upon any tide or shore lands or bed of navigable waters belonging to the state, to be used in the construction, maintenance or repair of any public street, road or highway within such county, city or town, may file with the commissioner of public lands an application for the purchase thereof, which application shall set forth the quantity and kind of material desired to be purchased, the location thereof, and the name, or other designation, and location of the street, road or highway upon which the material is to be used. The commissioner of public lands upon the receipt of such an application is authorized to sell said material in such manner and upon such terms as he deems advisable and for the best interest of the state for not less than the fair market value thereof to be appraised by the commissioner of public lands. The proceeds of any such sale shall be paid into the state treasury and credited to the fund to which the proceeds of the sale of the land upon which the material is situated would belong. [1927 c 255 § 44; RRS § 7797-44. Prior: 1923 c 71 § 1; 1917 c 148 § 13. Formerly RCW 79.12.250.]

79.01.178 Material removed for channel or harbor improvement, or flood control—Use for public purpose. When gravel, rock, sand, silt or other material from the state-owned bed and shores of any navigable body of water within the state is removed by any public agency or under public contract for channel or harbor improvement, or flood control, use of such material may be authorized by the department of natural resources for a public purpose on land owned or leased by the state, or any municipality, county, or public corporation: *Provided*, That when no public land site is available for deposit of such material, its deposit on private land with the landowner's permission is authorized and may be designated by the department of natural resources to be for a public purpose. Prior to removal and use, the state agency, municipality, county, or public corporation contemplating or arranging such use shall first obtain written permission from the department of natural resources. No payment of royalty shall be required for such gravel, rock, sand, silt, or other material used for such public purpose, but a charge will be made if such material is subsequently sold or used for some other purpose. Nothing in this section shall repeal or modify the provisions of RCW 75.20.100 or eliminate the necessity of obtaining a permit for such removal from other state agencies as otherwise required by law. [1970 ex.s. c 54 § 1; 1965 c 47 § 1.]

79.01.184 Sale procedure—Fixing date, place and time of sale—Notice—Publication and posting—Direct sale to applicant without notice, when. When the department of natural resources shall have decided to sell any public lands or valuable materials thereon, or with the consent of the board of regents of the University of Washington, or by legislative directive, shall have decided to sell any lot, block, tract or tracts of

university lands, or the timber, fallen timber, stone, gravel or other valuable material thereon it shall be the duty of the department to forthwith fix the date, place, and time of sale, and no sale shall be had on any day which is a legal holiday.

The department shall give notice of the sale by advertisement published once a week for four weeks next before the time it shall name in said notice, in at least one newspaper published and of general circulation in the county in which the whole, or any part of any lot, block, or tract of land to be sold, or the material upon which is to be sold is situated, and by causing a copy of said notice to be posted in a conspicuous place in the department's Olympia office and the district headquarters administering such sale and in the office of the county auditor of such county, which notice shall specify the place and time of sale, the appraised value thereof, and describe with particularity each parcel of land to be sold, or from which valuable materials are to be sold, and in case of material sales the estimated volume thereof, and specify that the terms of sale will be posted in the district headquarters and the department's Olympia office: *Provided*, That any sale of timber, fallen timber, stone, gravel, sand, fill material, or building stone of an appraised value of five hundred dollars or less may be sold directly to the applicant for cash at the full appraised value without notice or advertising. [1971 ex.s. c 123 § 2; 1969 ex.s. c 14 § 3; 1959 c 257 § 18; 1927 c 255 § 46; RRS § 7797-46. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.12.300.]

County auditor, transfer of duties: RCW 79.08.170.

School and granted lands, manner and terms of sale: State Constitution Art. 16 § 2.

79.01.188 Sale procedure—Pamphlet list of lands or materials—Notice of sale, proof of publishing and posting. The commissioner of public lands shall cause to be printed a list of all public lands, and of all tide or shore lands, or materials thereon, and the appraised value thereof, that are to be sold in the several counties of the state, said lists to be issued at least four weeks prior to the date of any sale of the lands or materials enumerated thereon, such lands and materials to be listed under the name of the county wherein located, in alphabetical order giving the appraised values, the character of the same and such other information as may be of interest to prospective buyers. Said commissioner of public lands shall cause to be distributed to the auditor of each county in the state a sufficient number of such lists to supply the demands made upon them respectively as reported by such auditors. And said county auditors shall keep the list so furnished in a conspicuous place or receptacle on the counter of the public office of their respective departments, and, when requested so to do, shall mail copies of such lists to residents of their counties. The commissioner of public lands shall retain for free distribution in his office and the district offices sufficient copies of said lists, to be kept in a conspicuous place or receptacle on the counter of the general office of the commissioner of public lands, and the districts, and, when requested so to do,

shall mail copies of said lists as issued to any applicant therefor. Proof of publication of the notice of sale shall be made by affidavit of the publisher, or person in charge, of the newspaper publishing the same and proof of posting the notice of sale and the receipt of the lists shall be made by certificate of the county auditor which shall forthwith be sent to and filed with the commissioner of public lands. [1959 c 257 § 19; 1927 c 255 § 47; RRS § 7797-47. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.12.310.]

County auditor, transfer of duties: RCW 79.08.170.

79.01.192 Sale procedure—Additional advertising expense. The commissioner of public lands is authorized to expend any sum in additional advertising of such sale as he shall determine to be for the best interest of the state. [1927 c 255 § 48; RRS § 7797-48. Prior: 1923 c 19 § 1; 1897 c 89 § 14. Formerly codified as RCW 79.12.320.]

79.01.196 Sale procedure—Place of sale—Hours—Reoffer—Continuance. When sales are made by the county auditor, they shall take place at such place on county property as the board of county commissioners may direct in the county in which the whole, or the greater part, of each lot, block or tract of land, or the material thereon, to be sold, is situated. All other sales shall be held at the departmental district offices having jurisdiction over the respective sales. Sales shall be conducted between the hours of ten o'clock in the forenoon and four o'clock in the afternoon.

Any sale which has been offered, and for which there are no bids received shall not be reoffered until it has been readvertised as specified in RCW 79.01.188 and 79.01.192. If all sales cannot be offered within the specified time on the advertised date, the sale shall continue on the following day between the hours of ten o'clock in the forenoon and four o'clock in the afternoon. [1965 ex.s. c 23 § 3; 1959 c 257 § 20; 1927 c 255 § 49; RRS § 7797-49. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.12.330.]

79.01.200 Sale procedure—Sales at auction or by sealed bid—Minimum price—Exception as to minor sale of valuable materials at auction—Direct sale to applicant without notice, when. All sales of land shall be at public auction, and all sales of valuable materials shall be at public auction or by sealed bid to the highest bidder, on the terms prescribed by law and as specified in the notice hereinbefore provided, and no land or materials shall be sold for less than its appraised value: *Provided*, That on public lands granted to the state for educational purposes sealed bids may be accepted for sales of timber or stone only: *Provided further*, That when valuable material has been appraised at an amount not exceeding five thousand dollars, the commissioner of public lands, when authorized by the board of natural resources, may arrange for the sale at

public auction of said valuable material and for its removal under such terms and conditions as the commissioner may prescribe, after said commissioner shall have caused to be published ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to property to be sold: *And provided further*, That any sale of timber, fallen timber, stone, gravel, sand, fill material, or building stone of an appraised value of five hundred dollars or less may be sold directly to the applicant for cash without notice or advertising. [1971 ex.s. c 123 § 3; 1969 ex.s. c 14 § 4; 1961 c 73 § 3; 1959 c 257 § 21; 1933 c 66 § 1; 1927 c 255 § 50; RRS § 7797–50. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.12.340.]

79.01.204 Sale procedure—Conduct of sales—Deposits—Memorandum of purchase. Such sales shall be conducted under the direction of the commissioner of public lands, by his authorized representative or by the county auditor of the county in which the sale is held. The commissioner's representative and the county auditor are hereinafter referred to as auctioneers. On or before the time specified in the notice of sale each bidder must deposit with the auctioneer, either in cash or by certified check, or by postal money order, payable to the order of the commissioner of public lands, an amount equal to the deposit specified in the notice of sale. The deposit shall include a specified amount of the appraised price for the land or valuable materials offered for sale, together with any fee required by law for the issuance of contracts, deeds or bills of sale. Said deposit may, when prescribed in notice of sale, be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale. The successful bidder's deposit will be retained by the auctioneer and the difference, if any, between the deposit and the total amount due, shall on the day of the sale be paid in cash, certified check, draft, postal money order, or by personal check made payable to the commissioner. Other deposits, if any, will be returned to the respective bidders at the conclusion of each sale. The auctioneer shall deliver to the purchaser, a memorandum of his purchase containing a description of the land, or materials, purchased, the price bid and the terms of the sale. The auctioneer shall at once send to the commissioner such cash or certified check, draft or postal money order, and a copy of the memorandum delivered to the purchaser, together with such additional report of his proceedings with reference to such sales as may be required by the commissioner. [1961 c 73 § 4; 1959 c 257 § 22; 1927 c 255 § 51; RRS § 7797–51. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.12.350.]

Sales and leases of state lands, transfer of duties of county auditor in class AA and class A counties to county treasurer: RCW 79.08.170.

79.01.208 Sale procedure—Readvertisement of lands not sold. If any land so offered for sale be not sold the same may again be advertised for sale, as provided

in this chapter, whenever in the opinion of the commissioner of public lands it shall be expedient so to do, and such land shall be again advertised and offered for sale as herein provided, whenever any person shall apply to the commissioner in writing to have such land offered for sale and shall agree to pay, at least the appraised value thereof and shall deposit with the commissioner at the time of making such application a sufficient sum of money to pay the cost of advertising such sale. [1927 c 255 § 52; RRS § 7797–52. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 24. Formerly RCW 79.12.360.]

79.01.212 Sale procedure—Confirmation of sale. If no affidavit showing that the interest of the state in such sale was injuriously affected by fraud or collusion, shall be filed with the commissioner of public lands within ten days from the receipt of the report of the auctioneer conducting the sale of any public lands, or valuable material thereon, and it shall appear from such report that the sale was fairly conducted, that the purchaser was the highest bidder at such sale, and that his bid was not less than the appraised value of the property sold, and if the commissioner shall be satisfied that the lands, or material, sold would not, upon being readvertised and offered for sale, sell for at least ten percent more than the price at which it shall have been sold, and that the payment, required by law to be made at the time of making the sale, has been made, and that the best interests of the state may be subserved thereby, the commissioner of public lands shall enter upon his records a confirmation of sale and thereupon issue to the purchaser a contract of sale, deed or bill of sale, as the case may be, as in this chapter provided. [1959 c 257 § 23; 1927 c 255 § 53; RRS § 7797–53. Prior: 1907 c 256 § 7; 1903 c 79 § 2; 1897 c 89 § 15; 1895 c 178 § 29. Formerly RCW 79.12.370.]

County auditor, transfer of duties: RCW 79.08.170.

79.01.216 Sale procedure—Terms of payment—Deferred payments, rate of interest. All state lands, and all tide and shore lands, shall be sold on the following terms: One-tenth to be paid on the date of sale and one-tenth to be paid one year from the date of the issuance of the contract of sale, and one-tenth annually thereafter until the full purchase price has been paid, but any purchaser may make full payment at any time. All deferred payments shall draw interest at such rate as may be fixed, from time to time, by rule adopted by the board of natural resources, and the rate of interest, as so fixed at the date of each sale, shall be stated in all advertising for and notice of said sale and in the contract of sale. The first installment of interest shall become due and payable one year after the date of the contract of sale and thereafter all interest shall become due and payable annually on said date, and all remittances for payment of either principal or interest shall be forwarded to the commissioner of public lands. [1969 ex.s. c 267 § 1; 1959 c 257 § 24; 1927 c 255 § 54; RRS § 7797–54. Prior: 1917 c 149 § 1; 1915 c 147 § 3; 1907 c 256 § 3; 1897 c 89 § 16; 1895 c 178 §§ 25, 29. Formerly RCW 79.12.380.]

79.01.220 Sale procedure—Certificate to governor of payment in full—Deed. When the entire purchase price of any state lands, or of any tide or shore lands, shall have been fully paid, the commissioner of public lands shall certify such fact to the governor, and shall cause a deed signed by the governor and attested by the secretary of state, with the seal of the state attached thereto, to be issued to the purchaser and to be recorded in the office of the commissioner of public lands, and no fee shall be required for any deed of land issued by the governor other than the fee provided for in this chapter. [1959 c 257 § 25; 1927 c 255 § 55; RRS § 7797–55. Prior: 1917 c 149 § 1; 1915 c 147 § 3; 1907 c 256 § 3; 1897 c 89 § 16; 1895 c 178 §§ 25, 29. Formerly RCW 79.12.390.]

79.01.224 Sale procedure—Reservation in contract. Each and every contract for the sale of, and each deed to, state, tide or shore lands shall contain the following reservation: "The party of the first part hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its successors, and assigns forever, all oils, gases, coal, ores, minerals and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals and fossils; and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its successors and assigns forever, the right to enter by itself, its agents, attorneys and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing and working mines thereon, and taking out and removing therefrom all such oils, gases, coal, ores, minerals and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself its successors and assigns, forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain and use all such buildings, machinery, roads and railroads, sink such shafts, remove such soil, and to remain on said lands or any part thereof for the business of mining and to occupy as much of said lands as may be necessary or convenient for the successful prosecution of such mining business, hereby expressly reserving to itself, its successors and assigns, as aforesaid, generally, all rights and powers in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the rights hereby expressly reserved.

No rights shall be exercised under the foregoing reservation, by the state, its successors or assigns, until provision has been made by the state, its successors or assigns, to pay to the owner of the land upon which the rights herein reserved to the state, its successors or assigns, are sought to be exercised, full payment for all damages sustained by said owner, by reason of entering upon said land: *Provided*, That if said owner from any cause whatever refuses or neglects to settle said damages, then the state, its successors or assigns, or any applicant for a lease or contract from the state for the purpose of prospecting for or mining valuable minerals,

or option contract, or lease, for mining coal, or lease for extracting petroleum or natural gas, shall have the right to institute such legal proceedings in the superior court of the county wherein the land is situate, as may be necessary to determine the damages which said owner of said land may suffer." [1927 c 255 § 56; RRS § 7797–56. Prior: 1917 c 149 § 1; 1915 c 147 § 3; 1907 c 256 § 3; 1897 c 89 § 16; 1895 c 178 §§ 25, 29. Formerly RCW 79.12.410.]

79.01.228 Sale procedure—Form of contract—Forfeiture—Extension of time. The purchaser of state lands, or of tide or shore lands, under the provisions of this chapter, except in cases where the full purchase price is paid at the time of the purchase, shall enter into and sign a contract with the state, to be signed by the commissioner of public lands on behalf of the state, with the seal of his office attached, and in a form to be prescribed by the attorney general, in which he shall covenant that he will make the payments of principal and interest, computed from the date the contract is issued, when due, and that he will pay all taxes and assessments that may be levied or assessed on such land, and that on failure to make the payments as prescribed in this chapter when due, and for six months thereafter, that he will, on demand of the commissioner of public lands, surrender said premises, and that upon such failure for six months all rights of the purchaser under said contract may, at the election of the commissioner of public lands, acting for the state, and without notice to said purchaser, be declared to be forfeited, and that when so declared forfeited the state shall be released from all obligation to convey the land.

The contract provided for in this section shall be executed in duplicate, and one copy shall be retained by the purchaser and the other shall be filed in the office of the commissioner of public lands.

The commissioner of public lands may, as he deems advisable, extend the time for payment of principal and interest on contracts heretofore issued, and contracts to be issued under this chapter.

The commissioner of public lands shall notify the purchaser of any state lands, and of tide or shore lands, in each instance when payment on his contract is overdue, and that he is liable to forfeiture if payment is not made within six months from the time the same became due, unless the time be extended by the commissioner of public lands. [1959 c 257 § 26; 1927 c 255 § 57; RRS § 7797–57. Prior: 1897 c 89 §§ 17, 18, 27; 1895 c 178 §§ 30, 31. Formerly RCW 79.12.400.]

79.01.232 Bill of sale for valuable materials sold separately. When timber, fallen timber, stone, gravel, or other valuable material, shall have been sold separate from the land and the purchase price paid in full, the commissioner of public lands shall cause a bill of sale, signed by the commissioner and attested by the seal of his office, setting forth the time within which such material shall be removed, to be issued to the purchaser and to be recorded in the office of the commissioner of public lands, upon the payment of the fee provided for

in this chapter. [1927 c 255 § 58; RRS § 7797–58. Formerly RCW 79.12.420.]

79.01.236 Subdivision of contracts or leases—Fee. Whenever the holder of a contract of purchase of any state lands, or of any tide or shore lands, or the holder of any lease of any such lands, except for mining of valuable minerals, or coal, or extraction of petroleum or gas, shall surrender the same to the commissioner with the request to have it divided into two or more contracts, or leases, the commissioner may divide the same and issue new contracts, or leases, but no new contract, or lease, shall issue while there is due and unpaid any interest, rental, or taxes or assessments on the land held under such contract or lease, nor in any case where the commissioner is of the opinion that the state's security would be impaired or endangered by the proposed division. For all such new contracts, or leases, a fee of five dollars for each new contract, or lease, issued, shall be paid by the applicant and such fee shall be paid into the state treasury with other fees of the office. [1959 c 257 § 27; 1955 c 394 § 2; 1927 c 255 § 59; RRS § 7797–59. Prior: 1903 c 79 § 3. Formerly RCW 79.12.260.]

79.01.240 Effect of mistake or fraud. Any sale or lease of state lands, or of tide or shore lands, made by mistake, or not in accordance with law, or obtained by fraud or misrepresentation, shall be void, and the contract of purchase, or lease, issued thereon, shall be of no effect, and the holder of such contract, or lease, shall be required to surrender the same to the commissioner of public lands, who, except in the case of fraud on the part of the purchaser, or lessee, shall cause the money paid on account of such surrendered contract, or lease, to be refunded to the holder thereof, provided the same has not been paid into the state treasury. [1959 c 257 § 28; 1927 c 255 § 60; RRS § 7797–60. Prior: 1903 c 79 § 3. Formerly RCW 79.12.280.]

79.01.244 Lease procedure—Duration—Restrictions. (1) The department of natural resources shall be authorized to lease to the highest bidder at public auction, any state lands, for any lawful purpose, except mining of valuable minerals or coal or extraction of petroleum or gas, but such lands shall not be leased for less than the appraised rental value thereof, nor shall agricultural lands be leased for less than fifty cents per acre.

(2) All state lands hereafter leased for grazing or agricultural purposes shall be open and available to the public for purposes of hunting and fishing unless closed to public entry because of fire hazard or unless the department of natural resources gives prior written approval and the area is lawfully posted by lessee to prohibit hunting and fishing thereon in order to prevent damage to crops or other land cover, to improvements on the land, to livestock, to the lessee, or to the general public, or closure is necessary to avoid undue interference with carrying forward a departmental or agency program. In the event any such lands are so posted it

shall be unlawful for any person to hunt or fish on any such posted lands.

(3) The department of natural resources shall insert the provisions of subsection (2) of this section in all grazing and agricultural leases hereafter issued.

(4) In judging the best and highest bid from lease proposals for recreational use of state owned land, the department of natural resources may seek and favor proposals providing for a public use of the leased premises that will provide comparable rental income to the state. [1969 ex.s. c 46 § 1; 1959 c 257 § 29; 1947 c 171 § 1; 1927 c 255 § 61; RRS § 7797–61. Prior: 1915 c 147 § 4; 1903 c 79 § 4; 1897 c 89 § 19; 1895 c 178 § 32. Formerly RCW 79.12.430.]

State school lands used by cities and counties for park and recreational purposes: RCW 79.08.220.

79.01.248 Lease procedure—List of lands to county auditor. When in the judgment of the commissioner of public lands a sufficient number of applications for leases as provided in the preceding section, have been received from any one county, the commissioner shall certify a list of such lands so applied for, and any other lands he may deem advisable to offer for lease at the same time, to the auditor of the county in which such lands are situated, and fix the time and place when and where such lands shall be offered for lease, and describe the character of the lands. [1927 c 255 § 62; RRS § 7797–62. Prior: 1897 c 89 § 20. Formerly RCW 79.12.440.]

Sales and leases of state lands, transfer of duties of county auditor in class AA and class A counties to county treasurer: RCW 79.08.170.

79.01.252 Lease procedure—List to be posted—Lease to highest bidder. Upon the receipt of any certified list of lands offered for lease, the county auditor shall post said list for a period of thirty days prior to the date of leasing, in some conspicuous place in his office, and elsewhere in the county, as the commissioner of public lands may direct, and on the day and at the place fixed by the commissioner, shall offer the lands described in the list, in separate tracts as directed by the commissioner, for lease to the highest bidder. [1927 c 255 § 63; RRS § 7797–63. Prior: 1897 c 89 § 21; 1895 c 178 § 37. Formerly RCW 79.12.450.]

County auditor, transfer of duties: RCW 79.08.170.

79.01.256 Lease procedure—Rental payment. The person or persons to whom any lease of lands is awarded, shall pay to the county auditor in cash or by certified check or accepted draft on any bank in this state, the first year's rental in accordance with his bid, and thereafter all rentals shall be paid annually in advance to the commissioner of public lands. [1927 c 255 § 64; RRS § 7797–64. Prior: 1897 c 89 § 22. Formerly RCW 79.12.460.]

County auditor, transfer of duties: RCW 79.08.170.

79.01.260 Lease procedure—County auditor's return—Disposition of moneys. When any state lands shall have been leased by the county auditor of any

county, the auditor shall at once certify a list of such lands to the commissioner of public lands, giving the name of each lessee, his post office address, the term of the lease, the lease price per annum, the amount paid on the lease, and any other information required by the commissioner of public lands, and shall forward to the commissioner one certified check, draft or postal money order, payable to the order of the commissioner of public lands, for all moneys so paid him on leases. The commissioner shall issue a receipt to the auditor for the total amount of money received, and a receipt to each lessee for the amount paid, which shall be in duplicate, the original receipt to be sent to the lessee and the duplicate thereof kept in the office of the commissioner. If the commissioner shall approve any lease he shall pay the moneys received therefor over to the state treasurer, together with a statement showing the funds to which said moneys, respectively, belong, and take his receipt therefor. [1927 c 255 § 65; RRS § 7797-65. Prior: 1915 c 147 § 5; 1903 c 79 § 5; 1897 c 89 § 23. Formerly RCW 79.12.470.]

County auditor, transfer of duties: RCW 79.08.170.

79.01.264 Lease procedure—Rejection or approval of leases. The commissioner of public lands may reject any and all bids for leases when the interests of the state shall justify it, and in such case he shall forthwith refund to the person paying the same any moneys paid, upon the return of receipts issued therefor. If the commissioner approve any leasing made by the county auditor he shall proceed to issue a lease to the lessee upon a form to be prescribed by the attorney general. All such leases shall be in duplicate, both to be signed by the lessee, and by the commissioner of public lands on behalf of the state, with the seal of the commissioner of public lands attached thereto. The original lease shall be forwarded to the lessee and the duplicate copy kept in the office of the commissioner of public lands. [1927 c 255 § 66; RRS § 7797-66. Prior: 1897 c 89 §§ 24, 26. Formerly RCW 79.12.480.]

County auditor, transfer of duties: RCW 79.08.170.

79.01.268 Lease procedure—Record of leases—Notice to pay rent—Forfeiture—Time extension. The commissioner of public lands shall keep a full and complete record of all leases issued under the provisions of the preceding sections and the payments made thereon, and not more than forty nor less than thirty days before the time any rental becomes due the commissioner of public lands shall cause to be mailed to the lessee a notice stating the date upon which his rental falls due and the amount thereof. If such rental be not paid on or before the date the same becomes due, according to the terms of the lease, the commissioner of public lands shall declare a forfeiture, cancel the lease and eject the lessee from the land: *Provided*, That the commissioner of public lands may extend the time for payment of annual rental when, in his judgment, the interests of the state will not be prejudiced thereby. [1933 c 139 § 1; 1927 c 255 § 67; RRS § 7797-67. Prior:

1915 c 147 § 6; 1909 c 223 § 5; 1897 c 89 § 25. Formerly RCW 79.12.490.]

79.01.272 Lease procedure—Improver's preference right to lease. The owner of improvements placed on state lands held under contracts of purchase from the state, where such contracts are forfeited to the state, shall have a preference right to lease any of such lands for a period of ninety days from the cancellation of his contract by the state, in the following manner: The owner of such improvements shall make application in writing, to the commissioner of public lands, for the lease of such lands, certifying under oath as to the character and value of such improvements, and setting forth the amount of annual rental offered for the lease of the lands, and if the commissioner shall deem the rental offered sufficient and that it is to the best interests of the state to accept said offer, he shall, upon the receipt of the first year's rental in advance in accordance with such offer, proceed to issue to the applicant a lease of the lands, for any period not exceeding ten years, in the same manner as in this chapter provided for the issuance of leases of state lands to the highest bidder at public auction. If such lands are not leased as above provided in this section, the same may be leased or sold as provided in this chapter for the lease or sale of state lands. [1959 c 257 § 30; 1927 c 255 § 68; RRS § 7797-68. Prior: 1897 c 89 § 29. Formerly RCW 79.12.500.]

79.01.276 Lease procedure—Renewal of leases. If at the expiration of any lease of any state lands, except lands leased for the purpose of mining of valuable minerals, or coal, or extraction of petroleum or gas, or any renewal of any such lease, the lessee desires to re-lease the lands covered thereby, he shall within thirty days after the expiration of his lease, or renewal lease, make application in writing, upon a form prepared for that purpose, to the commissioner of public lands for a re-lease, certifying under oath as to the character and value of all improvements existing on the land, name and post office address of the owner thereof, the purpose for which he desires to re-lease the land, the amount considered by such lessee to be the reasonable annual rental value of the lands, and such other information as the commissioner of public lands may require, and shall deposit with such application the sum of ten dollars, which deposit, if the applicant shall fail or refuse to accept a re-lease at the rate fixed by the commissioner of public lands, shall be forfeited to the state and by the commissioner paid into the state treasury and credited to the general fund. Upon the filing of any such application for a re-lease, the commissioner of public lands may cause the lands to be inspected and a full report made thereon as in the case of original applications for leases, and if he deems it for the best interests of the state to re-lease said lands to the applicant, he shall fix the rental value thereof and notify the applicant of the rental value so fixed, and if within thirty days after the date of such notice the applicant shall pay to the commissioner of public lands the first year's rental as fixed by the commissioner, together with the fees required by

law, less the sum of ten dollars already deposited, the commissioner shall issue to the applicant a renewal lease for any period not exceeding ten years. [1959 c 257 § 31; 1927 c 255 § 69; RRS § 7797-69. Prior: 1915 c 147 § 7; 1909 c 223 § 6; 1899 c 48 § 1; 1897 c 89 § 30. Formerly RCW 79.12.510.]

79.01.280 Lease procedure—Forfeiture of renewal deposit—Appraisal of improvements—New lease—Disposition of deposit for improvements. If the applicant fails or refuses to pay to the commissioner of public lands the first year's rental, together with the fees required by law, within thirty days after the date of the notice above provided for, the ten dollars deposited with the application shall be forfeited to the state and by the commissioner of public lands paid into the state treasury and credited to the general fund, and the commissioner may cause the improvements existing upon the land to be appraised in the same manner as in the case of the sale of lands, and offer the land for lease at public auction to the highest bidder, as provided for original leases, and if the successful bidder be not the owner of the improvements, he shall deposit with the officer offering the lands for lease, the appraised value of the improvements. The amount so deposited as the appraised value of improvements, together with the first year's rental and the fees required by law, shall be transmitted to the commissioner of public lands, and, upon confirmation of the lease by the commissioner, the amount so deposited in payment for the improvements shall be disposed of by the commissioner of public lands in the same manner as in the case of the sale of the land. [1927 c 255 § 70; RRS § 7797-70. Prior: 1915 c 147 § 7; 1909 c 223 § 6; 1899 c 48 § 1; 1897 c 89 § 30. Formerly RCW 79.12.520.]

79.01.284 Water right for irrigation as improvement. At any time during the existence of any lease of state lands, except lands leased for the purpose of mining of valuable minerals, or coal, or extraction of petroleum or gas, the lessee with the consent of the commissioner of public lands, first obtained, by written application, showing the cost and benefits to be derived thereby, may purchase or acquire a water right appurtenant to and in order to irrigate the land leased by him, and if such water right shall become a valuable and permanent improvement to the lands, then, in case of the sale or lease of such lands to other parties, the lessee acquiring such water right shall be entitled to receive the value thereof as in case of other improvements which he has placed upon the land. [1959 c 257 § 32; 1927 c 255 § 71; RRS § 7797-71. Prior: 1903 c 79 § 7; 1897 c 89 § 31; 1895 c 178 § 41. Formerly RCW 79.12.530.]

Water rights: Title 90 RCW.

79.01.288 Removal or sale of improvements upon termination of lease. Whenever the lessee of state lands, except lands leased for the purpose of mining of valuable minerals or coal, or extraction of petroleum or gas, shall surrender his lease before the end of its term or shall fail to re-lease such lands at the expiration of the term of his lease, any improvements made upon the

leased premises by the lessee, that are capable of removal without damage to the land, may be removed by the lessee, or may be left upon the land subject to purchase by any purchaser or lessee of the land within three years from the surrender or expiration of the lease. [1959 c 257 § 33; 1927 c 255 § 72; RRS § 7797-72. Prior: 1903 c 79 § 7; 1897 c 89 § 31; 1895 c 178 § 41. Formerly RCW 79.12.540.]

79.01.292 Assignment of contracts or leases. All contracts of purchase, or leases, of state lands, tide or shore lands or beds of navigable waters belonging to the state, issued by the commissioner of public lands shall be assignable in writing by the contract holder or lessee and the assignee shall be subject to and governed by the provisions of law applicable to the purchaser, or lessee, of whom he is the assignee, and shall have the same rights in all respects as the original purchaser, or lessee, of the lands, provided the assignment is approved by the commissioner of public lands and entered of record in his office. [1927 c 255 § 73; RRS § 7797-73. Prior: 1903 c 79 § 8. Formerly RCW 79.12.270.]

79.01.296 Grazing leases—Restrictions—Agricultural leases in lieu of. The lessee, or assignee of any lease, of state lands, leased for grazing purposes, shall not use the same for any other purpose than that expressed in the lease: *Provided*, That such lessee, or his assignee, of state lands, may surrender his lease to the commissioner of public lands and request the commissioner to issue an agricultural lease in lieu thereof, and in such case, the commissioner upon the payment of the fixed rental for agricultural purposes under the appraisalment of said land shall be authorized to issue a new lease, for the unexpired portion of the term of the lease surrendered, under which the lessee shall be permitted to clear, plow and cultivate the lands as in the case of an original lease for agricultural purposes. [1959 c 257 § 34; 1927 c 255 § 74; RRS § 7797-74. Prior: 1903 c 79 § 8. Formerly RCW 79.12.550.]

79.01.300 Leased lands reserved from sale—Exception. State lands held under lease as above provided shall not be offered for sale, or sold, during the life of the lease, except upon application of the lessee. [1927 c 255 § 75; RRS § 7797-75. Prior: 1897 c 89 § 23. Formerly RCW 79.12.560.]

79.01.301 Sale of lands used for grazing or other low priority purposes which have irrigated agricultural potential—Applications—Regulations. (1) The purpose of this section is to provide revenues to the state and its various taxing districts through the sale of public lands which are currently used primarily for grazing and similar low priority purposes, by enabling their development as irrigated agricultural lands.

(2) All applications for the purchase of lands of the foregoing character, when accompanied by a proposed plan of development of the lands for a higher priority use, shall be individually reviewed by the board of natural resources. The board shall thereupon determine whether the sale of the lands is in the public interest

and upon an affirmative finding shall offer such lands for sale under the applicable provisions of this chapter: *Provided*, That any such parcel of land shall be sold to the highest bidder but only at a bid equal to or higher than the last appraised valuation thereof as established by appraisers for the department for any such parcel of land: *Provided further*, That any lands lying within United States reclamation areas, the sale price of which is limited or otherwise regulated pursuant to federal reclamation laws or regulations thereunder, need not be offered for sale so long as such limitations or regulations are applicable thereto.

(3) The department of natural resources shall make appropriate regulations defining properties of such irrigated agricultural potential and shall take into account the economic benefits to the locality in classifying such properties for sale. [1967 ex.s. c 78 § 5.]

79.01.304 Abstracts of state lands. The commissioner of public lands shall cause full and correct abstracts of all the state lands, tidelands, shorelands, harbor areas and beds of navigable waters owned by the state, to be made and kept in his office in suitable and well bound books, and other suitable records. Such abstracts shall show in proper columns and pages the section or part of section, lot or block, township and range in which each tract is situated, whether timber or prairie, improved or unimproved, the appraised value per acre, the value of improvements and the value of damages, and the total value, the several values of timber, stone, gravel or other valuable materials thereon, the date of sale, the name of purchaser, sale price per acre, the date of lease, the name of lessee, the term of the lease, the annual rental, amount of cash paid, amount unpaid and when due, amount of annual interest, and in proper columns such other facts as may be necessary to show a full and complete abstract of the conditions and circumstances of each tract or parcel of land from the time the title was acquired by the state until the issuance of a deed or other disposition of the land by the state. [1927 c 255 § 76; RRS § 7797–76. Prior: (i) 1897 c 89 § 32; RRS § 7823. (ii) 1911 c 59 § 9; RRS § 7899. Formerly RCW 43.12.080.]

79.01.308 Applications for federal certification that lands are nonmineral. The commissioner of public lands is authorized and directed to make applications, and to cause publication of notices of applications, to the interior department of the United States for certification that any land granted to the state is nonmineral in character, in accordance with the rules of the general land office of the United States. [1927 c 255 § 77; RRS § 7797–77. Prior: 1897 c 89 § 33. Formerly RCW 79.08.130.]

79.01.312 Certain state lands subject to easements for removal of valuable materials. All state lands, or tide and shore lands belonging to the state, granted, sold or leased since the fifteenth day of June, 1911, or hereafter granted, sold or leased, containing timber, minerals, stone, sand, gravel, or other valuable materials, or when

other state, tide or shore lands contiguous or in proximity thereto contain any such valuable materials, shall be subject to the right of the state, or any grantee or lessee thereof who has acquired such other lands, or any such valuable materials thereon, since the fifteenth day of June, 1911, or hereafter acquiring such other lands or valuable materials thereon, to acquire the right of way over such lands so granted, sold or leased, for private railroads, skid roads, flumes, canals, watercourses or other easements for the purpose of, and to be used in, transporting and moving such valuable materials from such other lands, over and across the lands so granted or leased, upon the state, or its grantee or lessee, paying to the owner of lands so granted or sold, or the lessee of the lands so leased, reasonable compensation therefor. In case the parties interested cannot agree upon the damages incurred, the same shall be ascertained and assessed in the same manner as damages are ascertained and assessed against a railroad company seeking to condemn private property. [1927 c 255 § 78; RRS § 7797–78. Prior: 1911 c 109 § 1. Formerly RCW 79.36.010.]

Later enactment, see RCW 79.36.230.

Railroads, eminent domain: RCW 81.36.010 and 81.53.180.

State lands, eminent domain: RCW 8.28.010.

79.01.316 Certain state lands subject to easements for removal of valuable materials—Private easement over public lands subject to common user in removal of valuable materials. Every grant, deed, conveyance, contract to purchase or lease made since the fifteenth day of June, 1911, or hereafter made to any person, firm or corporation, for a right of way for a private railroad, skid road, canal, flume, watercourse or other easement, over or across any state lands, or tide or shore lands belonging to the state, for the purpose of, and to be used in, transporting and moving timber, minerals, stone, sand, gravel or other valuable materials of the land, shall be subject to the right of the state, or any grantee or lessee thereof, or other person who has acquired since the fifteenth day of June, 1911, or shall hereafter acquire, any lands containing valuable materials contiguous to, or in proximity to, such right of way, or who has so acquired or shall hereafter acquire such valuable materials situated upon state lands, or tide or shore lands belonging to the state, or contiguous to, or in proximity to, such right of way, of having such valuable materials transported or moved over such private railroad, skid road, flume, canal, watercourse or other easement, after the same is or has been put in operation, upon paying therefor just and reasonable rates for transportation, or for the use of such private railroad, skid road, flume, canal, watercourse or other easement, and upon complying with just, reasonable and proper rules and regulations relating to such transportation or use, which rates, rules and regulations, shall be under the supervision and control of the state department of public works. [1927 c 255 § 79; RRS § 7797–79. Prior: 1911 c 109 § 2. Formerly RCW 79.36.020.]

Reviser's note: The powers and duties of the "department of public works" referred to herein devolved upon the public service commission through a chain of statutes as follows: 1935 c 8 § 1; 1945 c 267 §§ 1, 5, 7 and 1949 c 117 §§ 1, 3, 8. The public service commission has since become the Washington utilities and transportation commission. See 1961 c 290 § 1.

Later enactment, see RCW 79.36.240.

Washington utilities and transportation commission: Chapter 80.01 RCW.

79.01.320 Certain state lands subject to easements for removal of valuable materials—Reasonable facilities and service for transportation must be furnished. Any person, firm or corporation, having acquired such right of way or easement since the fifteenth day of June, 1911, or hereafter acquiring such right of way or easement over any state lands, or tide or shore lands belonging to the state, or over or across any navigable water or stream, for the purpose of transporting or moving timber, mineral, stone, sand, gravel or other valuable materials, and engaged in such business thereon, shall accord to the state, or any grantee or lessee thereof, having since the fifteenth day of June, 1911, acquired, or hereafter acquiring, from the state, any state lands, or tide or shore lands, containing timber, mineral, stone, sand, gravel or other valuable materials, contiguous to or in proximity to such right of way or easement, or any person, firm or corporation, having since the fifteenth day of June, 1911, acquired, or hereafter acquiring, the timber, mineral, stone, sand, gravel or other valuable materials upon any state lands, or tide or shore lands belonging to the state, contiguous to or in proximity to the lands over which such right of way or easement is operated, proper and reasonable facilities and service for transporting and moving such valuable materials, under reasonable rules and regulations and upon payment of just and reasonable charges therefor, or, if such right of way or other easement is not then in use, shall accord the use of such right of way or easement for transporting and moving such valuable materials, under reasonable rules and regulations and upon the payment of just and reasonable charges therefor. [1927 c 255 § 80; RRS § 7797-80. Prior: 1911 c 109 § 3. Formerly RCW 79.36.030.]

Later enactment, see RCW 79.36.250.

79.01.324 Certain state lands subject to easements for removal of valuable materials—Duty of utilities and transportation commission. Should the owner or operator of any private railroad, skid road, flume, canal, watercourse or other easement operating over lands acquired since the fifteenth day of June, 1911, or hereafter acquired, from the state, as in the previous sections provided, fail to agree with the state, or any grantee thereof, as to the reasonable and proper rules, regulations and charges, concerning the transportation of timber, mineral, stone, sand, gravel or other valuable materials, from lands contiguous to, or in proximity to, the lands over which such private railroad, skid road, flume, canal, watercourse or other easement, is operated, for transporting or moving such valuable materials, the state, or such person, firm or corporation, owning

and desiring to have such valuable materials transported or moved, may apply to the state department of public works and have the reasonableness of the rules and regulations and charges inquired into, and it shall be the duty of the department of public works to inquire into the same and it is hereby given the same power and authority to investigate the same as it is now authorized to investigate or inquire into the reasonableness of rules, regulations and charges made by railroad companies, and it is authorized and empowered to make any such order as it would make in an inquiry against a railroad company, and in case such private railroad, skid road, flume, canal, watercourse or easement, is not then in use, may make such reasonable, proper and just rules and regulations concerning the use thereof for the purposes aforesaid as may be just and proper, and such order shall have the same force and effect, and be binding upon the parties to such hearing, as though such hearing and order was made affecting a common carrier railroad. [1927 c 255 § 81; RRS § 7797-81. Prior: 1911 c 109 § 4. Formerly RCW 79.36.040.]

Reviser's note: "department of public works", see note following RCW 79.01.316.

Later enactment, see RCW 79.36.270.

Transportation, general regulations: Chapter 81.04 RCW.

79.01.328 Certain state lands subject to easements for removal of valuable materials—Penalty for violation of orders—Reversion of easement. In case any person, firm or corporation, owning or operating any private railroad, skid road, flume, canal, watercourse or other easement, over and across any state lands, or tide or shore lands belonging to the state or any lands acquired since the fifteenth day of June, 1911, or hereafter acquired, from the state, subject to the provisions of the preceding sections, shall violate or fail to comply with any rule, regulation or order made by the state department of public works, after an inquiry and hearing as provided in the preceding section, such person, firm or corporation, shall be subject to a penalty of not to exceed one thousand dollars for each and every violation thereof, and in addition thereto such right of way, private road, skid road, flume, canal, watercourse or other easement and all improvements and structures on such right of way, and connected therewith, shall revert to the state or to the owner of the land over which such right of way is located, and may be recovered in an action instituted in any court of competent jurisdiction. [1927 c 255 § 82; RRS § 7797-82. Prior: 1911 c 109 § 5. Formerly RCW 79.36.050.]

Reviser's note: "department of public works", see note following RCW 79.01.316.

Later enactment, see RCW 79.36.280.

79.01.332 Certain state lands subject to easements for removal of valuable materials—Application for right of way—Appraisal of damage—Certificate, contents. Any person, firm or corporation, engaged in the business of logging or lumbering, quarrying, mining or removing sand, gravel or other valuable materials from land, and desirous of obtaining a right of way for

the purpose of transporting or moving timber, minerals, stone, sand, gravel or other valuable materials from other lands, over and across any state lands, or tide or shore lands belonging to the state, or any such lands sold or leased by the state since the fifteenth day of June, 1911, shall file with the commissioner of public lands upon a form to be furnished for that purpose, a written application for such right of way, accompanied by a plat showing the location of the right of way applied for with references to the boundaries of the government section in which the lands over and across which such right of way is desired are located. Upon the filing of such application and plat, the commissioner of public lands shall cause the lands embraced within the right of way applied for, to be inspected, and all timber thereon, and all damages to the lands affected which may be caused by the use of such right of way, to be appraised, and shall notify the applicant of the appraised value of such timber and such appraisal of damages. Upon the payment to the commissioner of public lands of the amount of the appraised value of timber and damages, the commissioner shall issue in duplicate a right of way certificate setting forth the terms and conditions upon which such right of way is granted, as provided in the preceding sections, and providing that whenever such right of way shall cease to be used for the purpose for which it was granted, or shall not be used in accordance with such terms and conditions, it shall be deemed forfeited. One copy of such certificate shall be filed in the office of the commissioner of public lands and one copy delivered to the applicant. [1927 c 255 § 83; RRS § 7797-83. Prior: 1921 c 55 § 1; 1915 c 147 § 12; 1897 c 89 § 34; 1895 c 178 § 45. Formerly RCW 79.36.060.]

Later enactment, see RCW 79.36.290.

79.01.336 Certain state lands subject to easements for removal of valuable materials—Forfeiture for non-user. Any such right of way heretofore granted which has never been used, or has ceased to be used for the purpose for which it was granted, for a period of two years, shall be deemed forfeited. The forfeiture of any such right of way heretofore granted, or granted under the provisions of the preceding sections, shall be rendered effective by the mailing of a notice of such forfeiture to the grantee thereof at his last known post office address and by stamping a copy of such certificate, or other record of the grant, in the office of the commissioner of public lands with the word "canceled", and the date of such cancellation. [1927 c 255 § 84; RRS § 7797-84. Prior: 1921 c 55 § 1; 1915 c 147 § 12; 1897 c 89 § 34; 1895 c 178 § 45. Formerly RCW 79.36.070.]

Later enactment, see RCW 79.36.290.

79.01.340 Right of way for roads and streets over, or for county wharves upon, public lands. Any county or city or the United States of America or state agency desiring to locate, establish and construct a road or street over and across any public lands of the state of Washington, or any county desiring to construct any wharf on tide or shore lands, shall by resolution of the

board of county commissioners of such county, or city council or other governing body of such city, or proper agency of the United States of America, or state agency, cause to be filed in the office of the commissioner of public lands a petition for a right of way for such road or street, setting forth the reasons for the establishment thereof, accompanied by a duly attested copy of a plat made by the county or city engineer or proper agency of the United States of America, or state agency, showing the location of the proposed road or street with reference to the legal subdivisions, or lots and blocks of the official plat, or the lands, over and across which such right of way is desired, the amount of land to be taken and the amount of land remaining in each portion of each legal subdivision or lot or block bisected by such proposed road or street.

Upon the filing of such petition and plat the commissioner of public lands, if he deem it for the best interest of the state to grant the petition, shall cause the land proposed to be taken to be inspected and shall appraise the value of any timber thereon and notify the petitioner of such appraised value.

If there be no timber on the proposed right of way, or upon the payment of the appraised value of any timber thereon, to the commissioner of public lands in cash, or by certified check drawn upon any bank in this state, or postal money order, except for all rights of way granted to the department of natural resources on which the timber, if any, shall be sold at public auction or by sealed bid, the commissioner may approve the plat filed with the petition and file and enter the same in the records of his office, and such approval and record shall constitute a grant of such right of way from the state. [1961 c 73 § 5; 1945 c 145 § 1; 1927 c 255 § 85; Rem. Supp. 1945 § 7797-85. Prior: 1917 c 148 § 9; 1903 c 20 § 1; 1897 c 89 § 35; 1895 c 178 § 46. Formerly RCW 79.36.080.]

79.01.344 Railroad right of way. A right of way through, over and across any state lands not held under a contract of sale, is hereby granted to any railroad company organized under the laws of this state, or any state or territory of the United States, or under any act of congress of the United States, to any extent not exceeding fifty feet on either side of the center line of any railroad now constructed, or hereafter to be constructed, and for such greater width as is required for excavations, embankments, depots, station grounds, passing tracks or borrow pits, which extra width shall not in any case exceed two hundred feet on either side of said right of way. [1927 c 255 § 86; RRS § 7797-86. Prior: 1907 c 104 § 1; 1901 c 173 § 1. Formerly RCW 79.36.090.]

Railroad rights of way: Chapter 81.52 RCW.

79.01.348 Railroad right of way—Procedure to acquire. In order to obtain the benefits of the preceding section any railroad company hereafter constructing, or proposing to construct, a railroad, shall file with the commissioner of public lands a copy of its articles of incorporation, due proof of organization thereunder, a map or maps, accompanied by the field notes of the

survey, showing the location of the line of said railroad, the width of the right of way and extra widths, if any, and shall pay to the commissioner of public lands as hereinafter provided the amount of the appraised value of the lands included within said right of way, and extra widths if any are required, and the damages to any lands affected by such right of way or extra widths. [1927 c 255 § 87; RRS § 7797-87. Prior: 1907 c 104 § 1; 1901 c 173 § 1. Formerly RCW 79.36.100.]

79.01.352 Railroad right of way—Appraisal. All state lands over which a right of way of any railroad to be hereafter constructed, shall be located, shall be appraised in the same manner as in the case of applications for the purchase of state lands, fixing the appraised value per acre for each lot or block, quarter section or subdivision thereof, less the improvements, if any, and the damages to any state lands affected by such right of way, shall be appraised in like manner, and the appraisal shall be recorded and the evidence or report upon which the same is based shall be preserved of record, in the office of the commissioner of public lands, and the commissioner shall send notice to the railroad company applying for the right of way that such appraisal has been made. [1927 c 255 § 88; RRS § 7797-88. Prior: 1901 c 173 §§ 2, 5. Formerly RCW 79.36.110.]

79.01.356 Railroad right of way—Improvements—Appraisal, deposit, etc. Should any improvements, made by anyone not holding adversely to the state at the time of making such improvements or made in good faith by a lessee of the state whose lease had not been canceled or was not subject to cancellation for any cause, or made upon the land by mistake, be upon any of such lands at the time of the appraisal, the same shall be separately appraised, together with the damage and waste done to said lands, or to adjacent lands, by the use and occupancy of the same, and after deducting from the amount of the appraisal for improvements the amount of such damage and waste, the balance shall be regarded as the value of said improvements, and the railroad company, if not the owner of such improvements, shall deposit with the commissioner of public lands the value of the same, as shown by said appraisal, within thirty days next following the date thereof. The commissioner of public lands shall hold such moneys for a period of three months, and unless a demand and proof of ownership of such improvements shall be made upon the commissioner within said period of three months, the same shall be deemed forfeited to the state and deposited with the state treasurer and paid into the general fund. If two or more persons shall file claims of ownership of said improvements, within said period of three months, with the commissioner of public lands, the commissioner shall hold such moneys until the claimants agree or a certified copy of the judgment decreeing the ownership of said improvements shall be filed with him. When notice of agreement or a certified copy of a judgment has been so filed, the commissioner of public lands shall pay over to the owner of the improvements the money so deposited.

[1927 c 255 § 89; RRS § 7797-89. Prior: 1915 c 147 § 13; 1901 c 173 § 4. Formerly RCW 79.36.120.]

79.01.360 Railroad right of way—Release or payment of damages as to improvements outside right of way. When the construction or proposed construction of said railroad affects the value of improvements on state lands not situated on the right of way or extra widths, the applicant for said right of way shall file with the commissioner of public lands a valid release of damages duly executed by the owner or owners of such improvements, or a certified copy of a judgment of a court of competent jurisdiction, showing that compensation for the damages resulting to such owner or owners, as ascertained in accordance with existing law, has been made or paid into the registry of such court. [1927 c 255 § 90; RRS § 7797-90. Prior: 1915 c 147 § 13; 1901 c 173 § 4. Formerly RCW 79.36.130.]

79.01.364 Railroad right of way—Certificate. Upon full payment of the appraised value of any right of way for a railroad and of damages to state lands affected, the commissioner of public lands shall issue to the railroad company applying for such right of way a certificate in such form as the commissioner of public lands may prescribe, in which the terms and conditions of said easement shall be set forth and the lands covered thereby described, and any future grant, or lease, by the state, of the lands crossed or affected by such right of way shall be subject to the easement described in the certificate. [1927 c 255 § 91; RRS § 7797-91. Prior: 1915 c 147 § 14; 1901 c 173 § 7. Formerly RCW 79.36.140.]

79.01.368 Railroad bridges across navigable streams. Any railroad company heretofore or hereafter organized under the laws of the territory or state of Washington, or of any other state or territory of the United States, or under any act of the congress of the United States, and authorized to do business in this state and to construct and operate railroads therein, shall have the right to construct bridges across the navigable streams within this state over which the line or lines of its railway will run, for the purpose of being made a part of said line of railway, or the more convenient use thereof, if said bridges are so constructed as not to interfere with, impede or obstruct the navigation of such streams. [1927 c 255 § 92; RRS § 7797-92. Formerly RCW 88.28.010.]

Bridges over navigable streams: RCW 81.36.100.

79.01.372 Public bridges or trestles across waterways and tide or shore lands. Counties, cities, towns and other municipalities shall have, and are hereby given the right to construct bridges and trestles across waterways heretofore or hereafter laid out under the authority of the state of Washington, and over and across any tide or shore lands of the state and harbor areas adjacent thereto over which the projected line or lines of any highway will run: *Provided*, Such bridges or trestles are constructed in good faith for the purpose of being made a part of the constructed line of such highway. [1927 c

255 § 93; RRS § 7797-93. Prior: 1915 c 20 § 1; 1909 c 158 § 1. Formerly RCW 88.28.020.]

79.01.376 Common carriers may bridge or trestle state waterways. Any corporation, copartnership, person or trustee heretofore or hereafter by any state or municipal law or ordinance authorized to construct and operate railroads, interurban railroads or street railroads as common carriers within this state, shall have, and hereby is given, the right to construct bridges or trestles across waterways heretofore or hereafter laid out under the authority of the state of Washington over which the projected line or lines of railroad will run: *Provided*, Such bridges or trestles are constructed in good faith for the purpose of being made a part of the constructed line of such railroad, and may also have included therewith the purpose of providing a roadway for the accommodation of vehicles and foot passengers. [1927 c 255 § 94; RRS § 7797-94. Prior: 1909 c 158 § 1. Formerly RCW 88.28.030.]

79.01.380 Location and plans of bridge or trestle to be approved—Future alterations. The location and plans of such structures shall be submitted to, and approved by, the commissioner of public lands of the state of Washington before construction is commenced: *Provided*, That in case the portion of such waterway at the place to be so crossed is navigable water of the United States, or otherwise within the jurisdiction of the United States, such location and plans shall also be submitted to, and approved by, the secretary of war and the chief of engineers of the United States before construction is commenced: *And provided further*, That when plans for any bridge or trestle have been approved by the commissioner of public lands, the secretary of war and the chief of engineers aforesaid, it shall not be lawful to deviate from such plans either before or after the completion of such structure, unless the modification of such plans have previously been submitted to, and received the approval of, the commissioner of public lands, the secretary of war and chief of engineers, as the case may be. Any structure hereby authorized and approved as aforesaid shall remain within the jurisdiction of the respective officer or officers approving the same, and shall be altered or changed from time to time at the expense of the municipality owning the highway or at the expense of the common carriers, at the time owning the road or roads using such structure, to meet the necessities of navigation and commerce, in such manner as may be from time to time ordered by the respective officer or officers at such time having jurisdiction of the same, and such orders may be enforced by appropriate action at law or in equity at the suit of the state. [1927 c 255 § 95; RRS § 7797-95. Prior: 1909 c 158 § 2. Formerly RCW 88.28.040.]

79.01.384 Right of way for utility pipe lines, transmission lines, etc. A right of way through, over and across any state lands, tidelands, shorelands, beds of navigable waters, oyster reserves belonging to the state, the reversionary interest of the state in oyster lands, or state forest lands, may be granted to any municipal or

private corporation, company, association, individual, or the United States of America, constructing or proposing to construct, or which has heretofore constructed, any telephone line, ditch, flume or pipe line for the domestic water supply of any municipal corporation or transmission line for the purpose of generating or transmitting electricity for light, heat or power. [1961 c 73 § 6; 1945 c 147 § 1; 1927 c 255 § 96; Rem. Supp. 1945 § 7797-96. Prior: 1925 c 6 § 1; 1921 c 148 § 1; 1919 c 97 § 1; 1909 c 188 § 1. Formerly RCW 79.36.150.]

79.01.388 Right of way for utility pipe lines, transmission lines, etc.—Procedure to acquire. In order to obtain the benefits of the grant made in RCW 79.01.384, the municipal or private corporation or company, association, individual, or the United States of America, constructing or proposing to construct, or which has heretofore constructed, such telephone line, ditch, flume, pipe line or transmission line, shall file, with the commissioner of public lands, a map, accompanied by the field notes of the survey and location of such telephone line, ditch, flume, pipe line or transmission line, and shall make payment therefor as provided in RCW 79.01.392. The land within the right of way shall be limited to an amount necessary for the construction of said telephone line, ditch, flume, pipe line or transmission line sufficient for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the same, and the grant shall include the right to cut all standing timber, and/or reproduction within said right of way. The grant shall also include the right to cut trees marked as danger trees by the applicant outside of the right of way, which shall be dangerous to the operation and maintenance of the telephone line, ditch, flume, pipe line or transmission line upon full payment of the appraised value thereof. [1961 c 73 § 7; 1959 c 257 § 35; 1945 c 147 § 2; 1927 c 255 § 97; Rem. Supp. 1945 § 7797-97. Prior: 1921 c 148 § 2; 1919 c 97 § 2; 1909 c 188 § 2. Formerly RCW 79.36.160.]

79.01.392 Right of way for utility pipe lines, transmission lines, etc.—Appraisal—Certificate—Reversion for nonuser. Upon the filing of the plat and field notes, as provided in RCW 79.01.388, the land applied for and the standing timber and/or reproduction on the right of way applied for, and the marked danger trees to be felled off the right of way, if any, and the improvements included in the right of way applied for, if any, shall be appraised as in the case of an application to purchase statelands. Upon full payment of the appraised value of the land applied for, or upon payment of an annual rental when the department of natural resources deems a rental to be in the best interests of the state, and upon full payment of the appraised value of the standing timber, reproduction, and improvements, if any, the commissioner of public lands shall issue to the applicant a certificate of the grant of such right of way stating the terms and conditions thereof and shall enter the same in the abstracts and records in his office, and thereafter any sale or lease of the lands affected by such

right of way shall be subject to the easement of such right of way. Should the corporation, company, association, individual, or the United States of America, securing such right of way ever abandon the use of the same for the purposes for which it was granted, the right of way shall revert to the state, or the state's grantee. [1961 c 73 § 8; 1959 c 257 § 36; 1945 c 147 § 3; 1927 c 255 § 98; Rem. Supp. 1945 § 7797-98. Prior: 1909 c 188 § 3. Formerly RCW 79.36.170.]

79.01.396 Right of way for irrigation, diking and drainage purposes. A right of way through, over and across any state lands or tide or shore lands belonging to the state is hereby granted to any irrigation district, or irrigation company duly organized under the laws of this state, and to any association, individual, or the United States of America, constructing or proposing to construct an irrigation ditch or pipe line for irrigation, or to any diking and drainage district or any diking and drainage improvement district proposing to construct a dike or drainage ditch. [1945 c 147 § 4; 1927 c 255 § 99; Rem. Supp. 1945 § 7797-99. Prior: 1917 c 148 § 6; 1907 c 161 § 1. Formerly RCW 79.36.180.]

79.01.400 Right of way for irrigation, diking and drainage purposes—Procedure to acquire. In order to obtain the benefits of the grant hereinabove provided for, the irrigation district, irrigation company, association, individual, or the United States of America, constructing or proposing to construct such irrigation ditch or pipe line for irrigation, or the diking and drainage district or diking and drainage improvement district constructing or proposing to construct any dike or drainage ditch, shall file with the commissioner of public lands a map accompanied by the field notes of the survey and location of the proposed irrigation ditch, pipe line, dike, or drainage ditch, and shall pay to the state as hereinafter provided, the amount of the appraised value of the said lands used for or included within such right of way. The land within said right of way shall be limited to an amount necessary for the construction of the irrigation ditch, pipe line, dike, or drainage ditch for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the same. [1945 c 147 § 5; 1927 c 255 § 100; Rem. Supp. 1945 § 7797-100. Prior: 1917 c 148 § 7; 1907 c 161 § 2. Formerly RCW 79.36.190.]

79.01.404 Right of way for irrigation, diking and drainage purposes—Appraisal—Certificate. Upon the filing of the plat and field notes as hereinabove provided, the lands included within the right of way applied for shall be appraised as in the case of an application to purchase such lands, at the full market value thereof. Upon full payment of the appraised value of the lands the commissioner of public lands shall issue to the applicant a certificate of right of way, and enter the same in the records in his office and thereafter any sale or lease by the state of the lands affected by such right of way shall be subject thereto. [1927 c 255 § 101;

RRS § 7797-101. Prior: 1907 c 161 § 3. Formerly RCW 79.36.200.]

79.01.408 Grant of overflow rights. The commissioner of public lands shall have the power to grant to any person or corporation the right, privilege and authority to perpetually back and hold water upon or over any state, tide, or shore lands, and overflow such lands and inundate the same, whenever the commissioner shall deem it necessary for the purpose of erecting, constructing, maintaining or operating any water power plant, reservoir, or works for impounding water for power purposes, irrigation, mining or other public use, but no such rights shall be granted until the value of the lands to be overflowed and any damages to adjoining lands of the state, appraised as in the case of an application to purchase such lands, shall have been paid by the person or corporation seeking the grant, and if the construction or erection of any such water power plant, reservoir, or works for impounding water for the purposes heretofore specified, shall not be commenced and diligently prosecuted and completed within such time as the commissioner of public lands may prescribe at the time of the grant, the same may be forfeited by the commissioner of public lands by serving written notice of such forfeiture upon the person or corporation to whom the grant was made, but the commissioner, for good cause shown to his satisfaction, may extend the time within which such work shall be completed. [1927 c 255 § 102; RRS § 7797-102. Prior: 1915 c 147 §§ 10, 11; 1907 c 125 §§ 1, 2. Formerly RCW 79.36.210.]

Department of conservation: Chapter 43.21 RCW.

Operating agencies (power commission): Chapter 43.52 RCW.

79.01.412 Construction of foregoing sections relating to rights of way and overflow rights. The foregoing sections relating to the acquiring of rights of way and overflow rights through, over and across lands belonging to the state, shall not be construed as exclusive or as affecting the right of municipal and public service corporations to acquire lands belonging to or under control of the state, or rights of way or other rights thereover, by condemnation proceedings. [1927 c 255 § 103; RRS § 7797-103. Formerly RCW 79.36.220.]

Eminent domain: Title 8 RCW.

Railroad rights of way: Chapter 81.52 RCW.

79.01.414 Grant of such easements and rights as applicant may acquire in private lands by eminent domain. The department of natural resources may grant to any person such easements and rights in state lands, tidelands, shorelands, oyster reserves, or state forest lands as the applicant applying therefor may acquire in privately owned lands through proceedings in eminent domain. No grant shall be made under this section until such time as the full market value of the estate or interest granted together with damages to all remaining property of the state of Washington has been ascertained and safely secured to the state. [1961 c 73 § 12.]

79.01.416 Condemnation proceedings where state land is involved. [1927 c 255 § 104; RRS § 7797-104.] See RCW 8.28.010.

79.01.420 Harbor lines and areas to be established. It shall be the duty of the board of state land commissioners to locate and establish harbor lines and determine harbor areas, as required by section 1, of Article XV of the state Constitution, where such harbor lines have not heretofore been located and established. [1927 c 255 § 105; RRS § 7797-105. Formerly RCW 43.65-.040, part.]

79.01.424 Relocation of inner harbor line. Whenever it appears that the inner harbor line of any harbor area heretofore determined has been so established as to overlap or fall inside of the government meander line, or for any other good cause, the board of state land commissioners is empowered to relocate and reestablish said inner harbor line so erroneously established, outside of said meander line, and all tidelands within said inner harbor line so reestablished and relocated, may be sold as other tidelands of the first class in accordance with the provisions of this chapter. [1927 c 255 § 106; RRS § 7797-106. Formerly RCW 43.65.050.]

Day Island Waterway, vacation, relocation of harbor lines: RCW 79-16.325-79.16.326.

Relocation of harbor lines, special acts (uncodified): Lake Union, Salmon Bay, Union Bay, Commencement Bay; 1953 c 173. Liberty Bay; 1961 c 22 § 1. Anacortes, Bellingham, Port Angeles, Renton, Seattle, Tacoma, and Olympia; 1963 c 139 § 1.

79.01.428 First class tide and shore lands to be platted—Public waterways. It shall be the duty of the commissioner of public lands to, simultaneously with the establishment of harbor lines and the determination of harbor areas in front of any city or town, or as soon thereafter as practicable, survey and plat all tide and shore lands of the first class not heretofore platted, and in platting the same to lay out streets which shall thereby be dedicated to public use, subject to the control of the cities or towns in which they are situated, and establish one or more public waterways not less than fifty nor more than one thousand feet wide, beginning at the outer harbor line and extending inland across the tidelands belonging to the state, which waterways shall include within their boundaries, as near as practicable, all navigable streams running through such tidelands, and shall be located at such other places as in the judgment of the commissioner of public lands may be necessary for the present and future convenience of commerce, and such waterways heretofore established under former laws or hereafter established shall be reserved from sale or lease as public ways for watercraft until vacated as provided in this chapter, and it shall be the duty of the commissioner of public lands to appraise the value of such platted tide and shore lands and enter such appraisal in the records of his office. [1927 c 255 § 107; RRS § 7797-107. Prior: 1901 c 161 § 1; 1897 c 89 § 40; 1895 c 178 § 53; 1890 pp 731-732 §§ 1-5. Formerly RCW 79.16.200.]

79.01.432 Streets, waterways, etc., validated. All alleys, streets, avenues, boulevards, waterways and other public places heretofore located and platted on the tide and shore lands of the first class, or harbor areas, as provided by law, and not heretofore vacated as provided by law, are hereby validated as public highways and dedicated to the use of the public for the purposes for which they were intended, subject however to vacation as in this chapter provided. [1927 c 255 § 108; RRS § 7797-108. Prior: 1897 c 89 § 41; 1895 c 178 § 54. Formerly RCW 79.16.210.]

79.01.436 Tide and shore lands—Plats—Record. The commissioner of public lands shall prepare plats showing all tide and shore lands surveyed, platted and appraised by him in the respective counties, on which shall be marked the location of all such lands, with reference to the lines of the United States survey of the abutting upland, and shall prepare in well bound books a record of his proceedings, including a list of said tide and shore lands surveyed, platted, or replatted, and appraised by him and his appraisal of the same, which plats and books shall be in triplicate, and the commissioner shall file one copy of such plats and records in his office, and file one copy in the office of the county auditor of the county where the lands platted, or replatted, and appraised are situated, and file one copy in the office of the city engineer of the city in which, or within two miles of which, the lands platted, or replatted, are situated. [1927 c 255 § 109; RRS § 7797-109. Prior: 1901 c 161 § 1; 1897 c 89 § 40; 1895 c 178 § 53. Formerly RCW 79.16.220.]

79.01.440 Tide and shore lands—Appraisal—Record. In appraising tide or shore lands hereafter platted, or replatted, by the commissioner of public lands, the commissioner shall appraise each lot, tract or piece of land separately, and shall enter in a well bound book to be kept in his office a description of each lot, tract or piece of tide or shore land, its full appraised value, the area and rate per acre at which it was appraised, and if any lot is covered in whole or in part by improvements in actual use for commerce, trade, residence, or business, on, or prior to, the date of the plat or replat, the commissioner shall enter the name of the owner, or reputed owner, the nature of the improvements, the area covered by the improvements, the portion of each lot, tract or piece of land covered, and the appraised value of the land covered, with, and exclusive of, the improvements. [1927 c 255 § 110; RRS § 7797-110. Prior: 1897 c 89 § 41; 1895 c 178 § 54. Formerly RCW 79.16.230.]

79.01.444 Tide and shore lands—Notice of filing plat and record of appraisal—Appeal. The commissioner of public lands shall, before filing in his office the plat and record of appraisal of any tide or shore lands platted and appraised by him, cause a notice to be published once each week for four consecutive weeks in a newspaper published and of general circulation in the county wherein the land covered by such plat and record are situated, stating that such plat and record,

describing it, is complete and subject to inspection at the office of the commissioner of public lands and will be filed on a certain day to be named in the notice.

Any person claiming a preference right of purchase of any of the tide and shore lands platted and appraised by the commissioner of public lands, and who feels aggrieved at the appraisal fixed by the commissioner upon said lands, or any part thereof, may within sixty days after the filing of such plat and record in the office of the commissioner (which shall be done on the day fixed in said notice), appeal from such appraisal to the superior court of the county in which the tide or shore lands are situated, in the manner provided by this chapter for appeals from orders or decisions.

The prosecuting attorney of any county, or city attorney of any city, in which such lands are situated, shall at the request of the governor, or of ten freeholders of the county or city, in which such lands are situated, appeal on behalf of the state, or the county, or city, from any such appraisal in the manner hereinabove provided.

Notice of such appeal shall be served upon the commissioner of public lands, and it shall be his duty to immediately notify all persons claiming a preference right to purchase the lands the appraisal of which has been appealed from.

Any party, other than the state, county or city, appealing, shall execute a bond to the state with sufficient surety, to be approved by the commissioner of public lands, in the sum of two hundred dollars conditioned for the payment of costs on appeal.

The superior court to which an appeal is taken shall hear evidence as to the value of the lands appraised and enter an order confirming, or raising, or lowering the appraisal appealed from, and the clerk of the court shall file a certified copy thereof in the office of the commissioner of public lands. The appraisal fixed by the court shall be final. [1927 c 255 § 111; RRS § 7797-111. Prior: 1897 c 89 § 44; 1895 c 178 § 57. Formerly RCW 79.16.240.]

79.01.448 Tide and shore lands—Preference right of upland owner—How exercised. Upon platting and appraisal of tide or shore lands of the first class, as in this chapter provided, if the department of natural resources shall deem it for the best public interests to offer said tide or shore lands of the first class for lease, the department shall cause a notice to be served upon the owner of record of land fronting upon the tide or shore lands to be offered for lease if he be a resident of this state, or if he be a nonresident of this state, shall mail to his last known post office address, as reflected in the county records, a copy of the notice notifying him that the state is offering such tide or shore lands for lease, giving a description and the department's appraised fair market value of such tide or shore lands for lease, and notifying such owner that he has a preference right to apply to lease said tide or shore lands at the appraised value for the lease thereof for a period of sixty days from the date of service or mailing of said notice. If at the expiration of the sixty days from the service or mailing of the notice, as above provided,

there being no conflicting applications filed, and the owner of land fronting upon the tide or shore lands offered for lease has failed to avail himself of his preference right to apply to lease or to pay to the department the appraised value for lease of the tide or shore lands described in said notice, then in that event, said tide or shore lands may be offered for lease and leased in the manner provided for the lease of state lands.

If at the expiration of sixty days two or more claimants asserting a preference right to lease shall have filed applications to lease any tract, conflicting with each other, the conflict between the claimants shall be equitably resolved by the department of natural resources as the best interests of the state require in accord with the procedures prescribed by chapter 34.04 RCW: *Provided*, That any contract purchaser of land or rights, which land qualifies the owner for a preference right under this section, shall have first priority for such preference right. [1971 ex.s. c 217 § 1; 1927 c 255 § 112; RRS § 7797-112. Prior: 1915 c 147 § 8; 1897 c 89 § 45; 1895 c 178 §§ 58, 61. Formerly RCW 79.16.250.]

79.01.452 Tide and shore lands—Sale of remaining lands. Any tide or shore lands of the first class remaining unsold and where there is no pending application for the purchase of the same under claim of any preference right, shall be sold on the same terms and in the same manner as provided for the sale of state lands, for not less than the appraised value fixed at the time of the application to purchase, and the commissioner of public lands whenever he shall deem it advisable and for the best interest of the state may reappraise such lands in the same manner as provided for the appraisal of state lands. [1959 c 257 § 37; 1927 c 255 § 113; RRS § 7797-113. Prior: 1897 c 89 § 47. Formerly RCW 79.16.260.]

79.01.456 Tide and shore lands—Petition for replat—Replatting and reappraisal—Vacation by replat. Whenever all of the owners and other persons having a vested interest in the lands embraced within any plat of tide or shore lands of the first class, heretofore or hereafter platted or replatted, or within any portion of any such plat in which there are unsold tide or shore lands belonging to the state, shall file a petition with the commissioner of public lands accompanied by proof of service of such petition upon the city council, or other governing body, of the city or town in which the tide or shore lands described in the petition are situated, or upon the board of county commissioners of the county in which such tide or shore lands outside of any incorporated city or town are situated, asking for a replat of such tide or shore lands, the commissioner is authorized and empowered to replat the tide or shore lands described in such petition, and all unsold tide or shore lands within such replat shall be reappraised as provided for the original appraisal of tide or shore lands. All streets, alleys, waterways and other public places embraced within any such plat or portion of plat vacated by the replat hereby authorized shall vest in the owner or owners of the lands abutting thereon. [1927 c

255 § 114; RRS § 7797-114. Prior: 1901 c 161 § 1; 1897 c 89 § 40; 1895 c 178 § 53. Formerly RCW 79.16.270.]

79.01.460 Tide and shore lands—Dedication of replat—All interests must join. If in the preparation of such replat by the commissioner of public lands it becomes desirable to appropriate any tide or shore lands heretofore sold, for use as streets, alleys, waterways or other public places, all persons interested in the title to such tide or shore lands desired for public places shall join in the dedication of such replat before it shall become effective. [1927 c 255 § 115; RRS § 7797-115. Prior: 1901 c 161 § 1. Formerly RCW 79.16.280.]

79.01.464 Tide and shore lands—Vacation by replat—Preference right of tideland owner. If any street, alley, waterway or other public place theretofore platted is vacated by a replat as in the foregoing sections provided and any new street, alley, waterway or other public place is so laid out as to leave unsold tidelands between such new street, alley, waterway or other public place, and tidelands theretofore sold, the owner of said tidelands theretofore sold shall have the preference right, for sixty days after the final approval of such replat, to purchase the unsold tidelands so intervening at the appraised value thereof. [1927 c 255 § 116; RRS § 7797-116. Prior: 1901 c 161 § 1; 1897 c 89 § 40; 1895 c 178 § 53. Formerly RCW 79.16.290.]

79.01.468 Tide and shore lands—Vacation procedure cumulative. The foregoing sections are intended to afford a method of procedure, in addition to other methods provided in this chapter for the vacation of streets, alleys, waterways and other public places platted on tide or shore lands. [1927 c 255 § 117; RRS § 7797-117. Formerly RCW 79.16.300.]

79.01.470 First and second class tidelands and shorelands, waterways of state to be sold only to public entities—Leasing—Limitation. (1) This section shall only apply to:

- (a) First class tidelands as defined in RCW 79.01.020;
- (b) Second class tidelands as defined in RCW 79.01.024;
- (c) First class shorelands as defined in RCW 79.01.028; and
- (d) Second class shorelands as defined in RCW 79.01.032.
- (e) Waterways as described in RCW 79.01.428.

(2) Notwithstanding any other provision of law, from and after August 9, 1971, all tidelands and shorelands enumerated in subsection (1) owned by the state of Washington shall not be sold except to public entities as may be authorized by law or except as provided in *section 2 of this 1974 amendatory act, and shall not be given away.

(3) Tidelands and shorelands enumerated in subsection (1) may be leased for a period not to exceed fifty-five years: *Provided*, That nothing herein shall be construed as modifying or canceling any outstanding lease during its present term.

(4) Nothing herein shall:

- (a) be construed to cancel an existing sale contract;
- (b) prohibit sale or exchange of beds and shorelands where the water course has changed and the area now has the characteristics of uplands;
- (c) prevent exchange involving state-owned tide and shorelands. [1974 1st ex.s. c 186 § 1; 1971 ex.s. c 217 § 2.]

***Reviser's note:** "section 2 of this 1974 amendatory act" [1974 1st ex.s. c 186] was vetoed.

79.01.471 Construction of RCW 79.01.470—Use and occupancy fee where unauthorized improvements placed on publicly owned aquatic lands. Nothing in RCW 79.01.470 and 79.01.471 shall be construed to prevent the assertion of public ownership rights in publicly owned aquatic lands or the leasing of such lands when such leasing is not contrary to the state-wide public interest.

The department of natural resources may require the payment of a use and occupancy fee in lieu of a lease where improvements have been placed without authorization on publicly owned aquatic lands. [1974 1st ex.s. c 186 § 3.]

79.01.472 Vacation of waterways—Extension of streets. Whenever any waterway established under the authority of the laws of this state, or any portion of such waterway, shall not have been excavated, or shall not be in use for the purposes of navigation, or shall no longer be required in the public interest to exist as a waterway, such waterway or portion thereof may be vacated by written order of the commissioner of public lands of the state of Washington whenever he shall be requested so to do by ordinance or resolution of the city council of the city in which such waterway is situate, in whole or in part, or, in case such waterway is situate, in whole or in part, in a port district organized under the laws of the state of Washington, whenever he shall be requested so to do by resolution of the port commission of such port district; and upon the making of such order the waterway or portion thereof shall thereupon be deemed to be and shall be thereby vacated: *Provided, however*, That if the waterway or portion thereof so vacated be navigable water of the United States, or otherwise within the jurisdiction of the United States, a copy of such resolution or ordinance, together with a copy of said order of the commissioner of public lands certified to by him, shall be submitted to the secretary of the army and chief of engineers of the United States for their approval, and if they approve the same such waterway or portion thereof shall thereupon be deemed to be and shall be thereupon vacated.

Upon such vacation occurring, in either of the manners aforesaid, the commissioner of public lands shall notify the city within, or in front of, which, such waterway is located, and the city shall have the right to extend across the portions so vacated any existing streets, or to select therefrom such portions thereof as the city may desire for street purposes, in no case to exceed one hundred fifty feet in width for any one street. Such selection shall be made within sixty days subsequent to

the receipt of notice of the vacation of the portion of the waterway so vacated.

Should such city fail to make such selection within such time, or within such time make such selection, the title of the remaining portions of such waterway so vacated shall vest in the state, unless the same be situate within the territorial limits of a port district created under the laws of the state, in which event such title shall vest in said port district. If subsequent to such vacation, the vacated waterway or portion of waterway shall be embraced within the limits of a port district created under the laws of the state, the title to such portions thereof as shall then remain undisposed of by the state shall vest in such port district. Such title so vesting shall be subject to any railroad or street railway crossings existing at the time of such vacation. [1967 ex.s. c 105 § 1; 1927 c 255 § 118; RRS § 7797-118. Prior: 1913 c 171 §§ 1, 2; 1909 c 63 §§ 1 through 3. Formerly RCW 79.16.310.]

Severability—1967 ex.s. c 105: See RCW 79.24.646.

79.01.476 Effect of replat of tide or shore lands. Any replat of tide or shore lands heretofore, or hereafter, platted shall be in full force and effect and shall constitute a vacation of streets, alleys, waterways and other public places theretofore dedicated and the dedication of new streets, alleys, waterways and other public places appearing upon such replat, when the same is recorded and filed as in the case of original plats. [1927 c 255 § 119; RRS § 7797-119. Prior: 1901 c 161 § 1; 1897 c 89 § 40; 1895 c 178 § 53. Formerly RCW 79.16.320.]

79.01.480 Sale of tidelands other than first class. All tidelands, other than first class, shall be offered for sale and sold in the same manner as state lands, other than capitol building lands, but for not less than five dollars per lineal chain, measured on the United States meander line bounding the inner shore limit of such tidelands, and each applicant shall furnish a copy of the United States field notes certified to by the officer in charge thereof, of said meander line with his application, and shall pay one-tenth of the purchase price on the date of sale. [1927 c 255 § 120; RRS § 7797-120. Prior: 1899 c 86 § 1; 1897 c 89 § 48. Formerly RCW 79.16.330.]

79.01.484 Shorelands of second class—Sale or lease when in best public interest—Preference right of upland owner—Procedure upon determining sale or lease not in best public interest or where transfer made for public use—Platting. If application is made to purchase or lease any shorelands of the second class and the department of natural resources shall deem it for the best public interest to offer said shorelands of the second class for sale or lease, the department shall cause a notice to be served upon the abutting upland owner if he be a resident of this state, or if the upland owner be a nonresident of this state, shall mail to his last known post office address, as reflected in the county records a copy of a notice notifying him that the state is offering such shorelands for sale or lease, giving

a description and the department's appraised fair market value of such shorelands for sale or lease, and notifying such upland owner that he has a preference right to purchase or lease said shorelands at the appraised value thereof for a period of thirty days from the date of the service or mailing of said notice. If at the expiration of the thirty days from the service or mailing of the notice, as above provided, the abutting upland owner has failed to avail himself of his preference right to purchase or lease or to pay to the department the appraised value for sale or lease of the shorelands described in said notice, then in that event, except as otherwise provided in this section, said shorelands may be offered for sale or lease and sold or leased in the manner provided for the sale or lease of state lands.

The department of natural resources shall authorize the sale or lease, whether to abutting upland owners or others, only if such sale or lease would be for the best public interest. It is the intent of the legislature that whenever it is in the best public interest, the shorelands of the second class managed by the department of natural resources shall not be sold but shall be maintained in public ownership for the use and benefit of the people of the state.

If, following an application by the abutting upland owner to either purchase or obtain an exclusive lease at appraised full market value or rental, the department deems that such sale or lease is not in the best public interest; or if property rights in state-owned second class shorelands are at any time withdrawn, sold or assigned in any manner authorized by law to a public agency for a use by the general public, the department shall within one hundred eighty days from receipt of such application to purchase or lease, or on reaching a decision to withdraw, sell, or assign such shorelands to a public agency:

- (1) Make a formal finding that the body of water adjacent to such shorelands is navigable;
- (2) Find that the state or the public has an overriding interest inconsistent with a sale or exclusive lease to a private person, and specifically identify such interest and the factor or factors amounting to such inconsistency; and
- (3) Provide for the review of said decision in accordance with the procedures prescribed by chapter 34.04 RCW.

Notwithstanding the above provisions, the department may cause any of such shorelands to be platted as is provided for the platting of shorelands of the first class, and when so platted such lands shall be sold or leased in the manner provided for the sale or lease of shorelands of the first class. [1969 ex.s. c 54 § 1; 1927 c 255 § 121; RRS § 7797-121. Prior: 1901 c 175 §§ 1 through 5; 1899 c 86 § 1; 1897 c 89 § 252. Formerly RCW 79.16.340.]

79.01.488 Second class tide or shore lands detached from upland by navigable water. Tide or shore lands of the second class which are separated from the upland by navigable waters, shall be sold at not less than five dollars per acre; an applicant to purchase such tide or shore lands shall, at his own expense, survey and cause

to be filed with his application a plat of the surveys of the land applied for, which surveys shall be connected with, and the plat shall show, two or more connections with the United States survey of the uplands, and the applicant shall also file the field notes of the survey of said land with his application. The commissioner of public lands shall examine and test said plat and field notes of survey, and if found incorrect or indefinite, he shall cause the same to be corrected or may reject the same and cause a new survey to be made. [1927 c 255 § 122; RRS § 7797-122. Prior: 1907 c 256 § 4; 1897 c 89 § 49; 1895 c 178 §§ 65 through 68. Formerly RCW 79.16.350.]

79.01.492 Accretions—Preference right to purchase. Any accretions that may be added to any tract or tracts of tide or shore lands heretofore sold or that may hereafter be sold, by the state, shall belong to the state and shall not be sold or offered for sale until such accretions shall have been first surveyed under the direction of the commissioner of public lands, and the owner of the adjacent tide or shore lands shall have the preference right to purchase said lands produced by accretion for thirty days after the owner of the adjacent tide or shore lands shall be notified by registered mail of his preference right to purchase such accreted lands. [1927 c 255 § 123; RRS § 7797-123. Prior: 1899 c 83 § 1; 1897 c 89 § 51; 1895 c 178 § 81. Formerly RCW 79.16.360.]

79.01.496 Tide or shore lands—Preference rights, time limit on exercise. All preference rights to purchase tide or shore lands awarded by the commissioner of public lands, or by the superior court in case of appeal from the award of the commissioner of public lands, shall be exercised by the parties to whom the award is made within thirty days from the date of the service of notice of the award by registered mail, by the payment to the commissioner of public lands of the sums required by law to be paid for a contract, or deed, as in the case of the sale of state lands, other than capitol building lands, and upon failure to make such payment such preference rights shall expire. [1927 c 255 § 124; RRS § 7797-124. Prior: 1899 c 83 § 1; 1897 c 89 § 51. Formerly RCW 79.16.370.]

79.01.500 Court review of actions. Any applicant to purchase, or lease, any public lands of the state, or any valuable materials thereon, and any person whose property rights or interests will be affected by such sale or lease, feeling himself aggrieved by any order or decision of the board of state land commissioners, or the commissioner of public lands, concerning the same, may appeal therefrom to the superior court of the county in which such lands or materials are situated, by serving upon all parties who have appeared in the proceedings in which the order or decision was made, or their attorneys, a written notice of appeal, and filing such notice, with proof, or admission, of service, with the board, or the commissioner, within thirty days from the date of the order or decision appealed from, and at

the time of filing the notice, or within five days thereafter, filing a bond to the state, in the penal sum of two hundred dollars, with sufficient sureties, to be approved by the secretary of the board, or the commissioner, conditioned that the appellant shall pay all costs that may be awarded against him on appeal, or the dismissal thereof. Within thirty days after the filing of notice of appeal, the secretary of the board, or the commissioner, shall certify, under official seal, a transcript of all entries in the records of the board, or the commissioner, together with all processes, pleadings and other papers relating to and on file in the case, except evidence used in such proceedings, and file such transcript and papers, at the expense of the applicant, with the clerk of the court to which the appeal is taken. The hearing and trial of said appeal in the superior court shall be de novo before the court, without a jury, upon the pleadings and papers so certified, but the court may order the pleadings to be amended, or new and further pleadings to be filed. Costs on appeal shall be awarded to the prevailing party as in actions commenced in the superior court, but no costs shall be awarded against the state, the board, or the commissioner. Should judgment be rendered against the appellant, the costs shall be taxed against him and his sureties on the appeal bond, except when the state is the only adverse party, and shall be included in the judgment, upon which execution may issue as in other cases. Any party feeling himself aggrieved by the judgment of the superior court may appeal therefrom to the supreme court or the court of appeals of the state, in the manner, and within the time, for appealing from judgments in actions at law. Unless appeal be taken from the judgment of the superior court, the clerk of said court shall, on demand, certify, under his hand and the seal of the court, a true copy of the judgment, to the board, or the commissioner, which judgment shall thereupon have the same force and effect as if rendered by the board, or the commissioner. In all cases of appeals from orders or decisions of the commissioner of public lands involving the prior right to purchase tidelands of the first class, if the appeal be not prosecuted, heard and determined, within two years from the date of the appeal, the attorney general shall, after thirty days' notice to the appellant of his intention so to do, move the court for a dismissal of the appeal, but nothing herein shall be construed to prevent the dismissal of such appeal at any time in the manner provided by law. [1971 c 81 § 139; 1927 c 255 § 125; RRS § 7797-125. Prior: 1901 c 62 §§ 1 through 7; 1897 c 89 § 52; 1895 c 178 § 82. Formerly RCW 79.08.030.]

79.01.504 Authority to lease tidelands and harbor areas—Conditions. The power to lease all platted first class tidelands, second class tidelands and all harbor areas belonging to the state and situate upon tidal waters, shall be vested in the commissioner of public lands, who shall have authority to make leases thereof to such persons, upon such terms and conditions and for such length of time, conformably to the state Constitution and this chapter, as he may prescribe. All applications for leases of harbor areas situate upon tidal waters, or tidelands, lying within the limits of a port

district shall before the execution of any such lease be referred by the commissioner of public lands to the port commission of such port district who shall make such investigation as it deems advisable, and by resolution make to the commissioner of public lands within sixty days, such recommendations as to the character of the improvements, time of commencement and completion thereof, the percentage for fixing rental, and the terms and conditions of the lease, as to such port commission shall seem proper, which recommendations shall be advisory to but not binding upon the commissioner of public lands. No preference rights are renewed or created under the provisions of this section and the power of the commissioner of public lands to grant or reject an application as the public interest in his judgment may require, is hereby declared, but nothing in this section contained shall be construed to nullify or qualify the provisions of RCW 79.01.508, or 79.01.512. In every lease granted the commissioner of public lands shall insert a provision reserving to the state, port district, county, city or other public agency in the territory where the portion of the harbor area described in such lease is located, the right to assume and thereafter hold such lease upon acquirement of the tidelands contiguous thereto and fronting thereon, without any value for said lease except for improvements thereon. [1927 c 255 § 126; RRS § 7797-126. Prior: 1923 c 171 § 1. Formerly RCW 79.16.020.]

Lease of state-owned fresh water harbor areas: Chapter 53.32 RCW.

79.01.508 Terms of leases. Applications, leases, and bonds of lessees, shall be in such form as the commissioner shall prescribe. Every lease shall provide that the rental shall be payable to the commissioner, and for cancellation by the commissioner upon sixty days' written notice for any breach of the conditions thereof. Every lessee shall furnish a bond, with surety satisfactory to the commissioner, in such penalty as he may prescribe, but not less than five hundred dollars, conditioned for the faithful performance of the terms of the lease and the payment of the rent when due. If the commissioner shall at any time deem any bond insufficient, he may require the lessee to file a new and sufficient bond within thirty days after receiving notice so to do.

Applications for leases of harbor areas upon tidal waters shall be accompanied by such plans and drawings and other data concerning the proposed wharves, docks or other structures or improvements thereof as the commissioner shall require. Every lease of harbor area shall provide that, wharves, docks or other conveniences of navigation and commerce adequate for the public needs, to be specified in such lease, shall be constructed within such time as may be fixed in each case by the commissioner; that in no case shall the construction be commenced more than two years from the date of such lease and shall be completed within such reasonable time as the commissioner shall fix, any of which times may be extended by the commissioner either before or after their expiration, and the character of the improvements may be changed either before or

after completion with the approval of the commissioner: *Provided*, That if in his opinion the improvements existing upon such harbor area or the tidelands adjacent thereto are adequate for the public needs, the commissioner may require the maintenance of such existing improvements and need not require further improvements. [1927 c 255 § 127; RRS § 7797-127. Prior: 1923 c 171 § 2. Formerly RCW 79.16.030.]

79.01.512 Construction or extension of docks, wharves, etc.—New lease. If the owner of any lease of harbor area upon tidal waters shall desire to construct thereon any wharf, dock or other convenience of navigation or commerce, or to extend, enlarge or improve any existing structure used in connection with such harbor area, and shall deem the required expenditure not warranted by his right to occupy such harbor area during the remainder of the term of his lease, he may make application to the department of natural resources for a new lease of such harbor area for a period not exceeding thirty years. Upon the filing of such application accompanied by such proper plans, drawings or other data, the department shall forthwith investigate the same and if it shall determine that the proposed work or improvement is in the public interest and reasonably adequate for the public needs, it shall by order fix the terms and conditions and the rate of rental for such new lease, such rate of rental to be a fixed percentage during the term of such lease on the true and fair value in money of such harbor area, determined from time to time by the department of natural resources as provided in RCW 79.01.520. The department may propose modifications of the proposed wharf, dock or other convenience or extensions, enlargements or improvements thereon. The department shall, within ninety days from the filing of such application notify the said applicant in writing of the terms and conditions upon which such new lease will be granted, and of the rental to be paid and if the applicant shall within ninety days thereafter elect to accept a new lease of such harbor area upon the terms and under the conditions and at the rental prescribed by the department, the department shall make a new lease for such harbor area for the term applied for and the existing lease shall thereupon be surrendered and canceled. [1969 ex.s. c 97 § 1; 1927 c 255 § 128; RRS § 7797-128. Prior: 1923 c 171 § 3. Formerly RCW 79.16.040.]

79.01.516 Re-leases of harbor areas. Upon the expiration of any lease of harbor area upon tidal waters hereafter expiring the owner thereof may apply for a re-lease of such harbor area for a period not exceeding thirty years. Such application shall be accompanied with maps showing the existing improvements upon such harbor area and the tidelands adjacent thereto and with proper plans, drawings and other data showing any proposed extensions or improvements of existing structures. Upon the filing of such application the department of natural resources shall forthwith investigate the same and if it shall determine that the character of the wharves, docks or other conveniences of commerce and navigation are reasonably adequate for the public

needs and in the public interest, it shall by order fix and determine the terms and conditions upon which such re-lease shall be granted and the rate of rental to be paid which rate shall be a fixed percentage during the term of such lease on the true and fair value in money of such harbor area determined from time to time by the department of natural resources as provided in RCW 79.01.520. [1969 ex.s. c 97 § 2; 1927 c 255 § 129; RRS § 7797-129. Prior: 1923 c 171 § 4. Formerly RCW 79.16.050.]

79.01.520 Department's valuation prior to lease, renewal or re-lease—Appeal. Prior to the issuance of a lease, renewal lease, or re-lease of harbor area on tidal waters under the preceding sections of this chapter, and every five years thereafter during the life of all leases written after August 11, 1969, and no less frequently than every five years for all prior leases, the department of natural resources shall determine the true and fair value in money of such harbor area (exclusive of the improvements thereon), which value shall be the value at which the property would be taken in payment of a just debt from a solvent debtor. All harbor area leases will stipulate the percentage rate of said values that will be paid as the annual rent during the period until the next reappraisal of the value of the harbor area as established herein: *Provided*, That the applicant, or lessee, being dissatisfied with the valuation as fixed by the department of natural resources shall have the right of appeal from the findings of the department to a valuation board to be composed of the county commissioners, the county treasurer and the county assessor of the county in which the harbor area is located. To perfect such appeal, notice thereof shall be in writing and a copy must, within ten days after receipt of notice of the department of natural resources' valuation, be personally served upon each member of the board of county commissioners and upon the county treasurer, the county assessor, and the administrator of the department of natural resources; or such copy may be left at the residence of such officer with some person of suitable age and discretion. Service of the notice may be made by any person qualified to serve a summons in a civil action. Within five days following the service of said notice on the chairman of the board of county commissioners, said chairman shall fix a time and place for a meeting of said valuation board and shall notify each of the officers of said board thereof, which said time shall be not less than five nor more than ten days from the date of giving said notice; like notice of the time and place fixed for said hearing shall also be given the applicant, or lessee, and the department of natural resources. Except as otherwise provided in chapter 79.01 RCW, such hearing will be conducted in compliance with chapter 34.04 RCW. At the time and place fixed for said meeting, the said board shall meet and determine, by such means as it may select, the valuation of the harbor area in question. A majority of said officers shall constitute a quorum for the purpose of determining the question, and the valuation shall be determined by a majority vote of the members of said

board. If a majority of the members of said board participate in said meeting no question shall be made as to any irregularity of the giving of the notices required. The meeting of the board and its deliberations and voting shall be open to the public and any interested parties. The decision of the board of the question of valuation shall be final and conclusive on all parties. [1969 ex.s. c 97 § 3; 1927 c 255 § 130; RRS § 7797-130. Prior: 1923 c 171 § 5. Formerly RCW 79.16.060.]

79.01.524 Procedure to re-lease harbor areas. Upon receipt of the valuation of any tract of harbor area applied for, under RCW 79.01.516, the commissioner shall notify the applicant of the terms and conditions upon which the re-lease will be granted and of the rental fixed, and such applicant or his successor in interest shall have the option for the period of sixty days from the date of the service of such notice in which to accept a lease on the terms and conditions and at the rental so fixed and determined. If such terms and conditions and rental be accepted a new lease shall be granted for the term applied for. If such terms and conditions be not accepted within the time aforesaid or within such further time, not exceeding three months, as said commissioner shall grant, the same shall be deemed rejected by the applicant, and the commissioner shall give eight weeks' notice by publication in one or more weekly newspapers printed and of general circulation in the county in which such harbor area is situate, that a lease of such harbor area will be sold on said terms and conditions and at said rental at a time and place specified in such notice (which shall not be more than three months from the date of the first publication of said notice) to the person offering at such public sale to pay the highest sum as a cash bonus at the time of sale for such lease. Notice of such sale shall be served upon the applicant at least six weeks prior to the date thereof. The person paying the highest sum as a cash bonus shall be entitled to lease such harbor area. If such lease be not sold at such public sale the commissioner may at any time or times again fix the terms, conditions and rental and again advertise such lease for sale as above provided and upon similar notice, upon failure to secure any sale of such lease as above prescribed, the commissioner may issue revocable leases without requirement of improvements for one year periods at the minimum rate of two percent. [1927 c 255 § 131; RRS § 7797-131. Prior: 1923 c 171 § 6. Formerly RCW 79.16.070.]

79.01.528 Regulation of wharfage, dockage and other tolls. The state of Washington shall ever retain and does hereby reserve the right to regulate the rates of wharfage, dockage and other tolls to be imposed by the lessee or his assigns upon commerce for any of the purposes for which the leased area may be used and the right to prevent extortion and discrimination in such use thereof. [1927 c 255 § 132; RRS § 7797-132. Prior: 1923 c 171 § 7. Formerly RCW 79.16.080.]

79.01.532 "Person" defined. The word "person" as used in the preceding sections relating to the leasing of harbor areas, shall be construed to mean, person, firm, corporation, political subdivision or municipality, or any public commission. [1927 c 255 § 133; RRS § 7797-133. Prior: 1923 c 171 § 8. Formerly RCW 79.16.010.]

79.01.536 Lease of unplatted first class tide or shore lands for booming purposes. The commissioner of public lands is authorized to lease to the abutting upland owner any unplatted first class tide or shore lands or in case the abutting uplands are not improved and occupied for residential purposes and the abutting upland owner has not filed an application for the lease of such lands, may lease the same to any person, firm or corporation for booming purposes.

The commissioner of public lands shall prior to the issuance of any lease under the provisions of this section fix the annual rental for the lands and prescribe the terms and conditions of the lease. No lease issued under the provisions of this section shall be for a longer term than ten years from the date thereof and every such lease shall be subject to termination upon ninety days' notice to the lessee in the event that the commissioner of public lands shall decide that it is to the best interest of the state that such tide or shore lands be surveyed and platted. Failure to use any lands leased under the provisions of this section for booming purposes, for such purposes, for a period of one year shall work a forfeiture of such lease and such land shall revert to the state without any notice to the lessee upon the entry of a declaration of forfeiture in the records of the commissioner of public lands. At the expiration of any lease issued under the provisions of this section, the lessee, his successors or assigns, shall have a preference right to re-lease the lands covered by his original lease, or any portion thereof if the commissioner of public lands shall deem it to the best interest of the state to re-lease the same, for succeeding periods not exceeding five years each at such rental and upon such terms and conditions as may be prescribed by said commissioner of public lands. [1927 c 255 § 134; RRS § 7797-134. Prior: 1923 c 29 § 1; 1921 c 118 §§ 1, 2. Formerly RCW 79.16.090.]

79.01.540 Lease of second class tide or shore lands for booming purposes. The commissioner of public lands is authorized to lease any second class tide or shore lands, whether reserved from sale, or from lease for other purposes, by or under authority of law, or not, except any oyster reserve containing oysters in merchantable quantities, to any person, firm or corporation, for booming purposes, for any term not exceeding ten years from the date of such lease, for such annual rental and upon such terms and conditions as the commissioner of public lands may fix and determine, and to forfeit and terminate any such lease at any time for failure to pay the fixed rental or for any violation of the terms or conditions thereof. The lessee of any such lands for booming purposes shall receive, hold and assort the logs and other timber products of all persons requesting such service and upon the same terms and

without discrimination, and may charge and collect tolls for such service not to exceed seventy-five cents per thousand feet scale measure on all logs, spars or other large timber and reasonable rates on all other timber products, and shall be subject to the same duties and liabilities, so far as the same are applicable, as are imposed upon boom companies organized under the laws of this state. Failure to use any lands leased under the provisions of this section for booming purposes for the period of one year shall work a forfeiture of such lease, and such lands shall revert to the state without any notice to the lessee upon the entry of a declaration of forfeiture in the records of the commissioner of public lands. At the expiration of any lease issued under the provisions of this section, the lessee shall have the preference right to re-lease the lands covered by his original lease for a further term, not exceeding ten years, at such rental and upon such terms and conditions as may be prescribed by the commissioner of public lands. [1927 c 255 § 135; RRS § 7797-135. Prior: 1917 c 148 § 12; 1911 c 86 § 1; 1907 c 233 § 1. Formerly RCW 79.16.100.]

79.01.544 Lease of platted shorelands. The commissioner of public lands is authorized to lease any platted first class shorelands, or any second class shorelands, in the same manner as provided for the lease of state lands, except capitol building lands, but in all cases where application is made for the lease of any second class shorelands adjacent to upland, under the provisions of this section, the same shall be leased per lineal chain frontage, and the United States field notes of the meander line shall accompany each application as required for the sale of such lands, and when application is made for the lease of second class shorelands separated from the upland by navigable waters, the application shall be accompanied by the plat and field notes of a survey of the lands applied for, as required with applications for the purchase of such lands. [1927 c 255 § 136; RRS § 7797-136. Prior: 1899 c 86 § 2; 1897 c 89 § 50. Formerly RCW 79.16.110.]

79.01.548 Failure to purchase or re-lease tide or shore lands—Appraisal of improvements. In case any lessee of tide or shore lands, for any purpose except mining of valuable minerals, or coal, or extraction of petroleum or gas, or his successor in interest, shall after the expiration of any lease fail to purchase or re-lease from the state the tide or shore lands formerly covered by his lease, when the same are offered for sale or re-lease, then and in that event the commissioner of public lands shall appraise and determine the value of all improvements existing upon such tide or shore lands at the expiration of the lease, which are not capable of removal without damage to the land, including the cost of filling and raising said property above high tide, or high water, whether filled or raised by the lessee or his successors in interest, or by virtue of any contract made with the state, and also including the then value to the land of all existing local improvements paid for by such lessee or his successors in interest. In case the lessee or

his successor in interest, is dissatisfied with the appraised value of such improvements as determined by the commissioner of public lands, he shall have the right to appeal to the superior court of the county wherein said tide or shore lands are situated, within the time and according to the mode prescribed in this chapter for taking appeals from decisions of the commissioner of public lands. In case such tide or shore lands are leased, or sold, to any person, persons or corporation, other than such lessee or his successor in interest, within three years from the expiration of the former lease, the bid of such subsequent lessee or purchaser shall not be accepted until payment is made by such subsequent lessee or purchaser of the appraised value of the improvements as determined by the commissioner of public lands, or as may be determined on appeal, to such former lessee, or his successor in interest. In case such tide or shore lands are not leased, or sold, within three years after the expiration of such former lease, then and in that event, such improvements existing on the lands at the time of any subsequent lease or sale thereof, shall be considered a part of the land, and shall be taken into consideration in appraising the value, or rental value, of the land, and sold, or leased, with the land. [1927 c 255 § 137; RRS § 7797-137. Prior: 1905 c 173 §§ 1 through 3. Formerly RCW 79.16.120.]

79.01.552 Sale of small tracts adjoining oyster lands—Procedure—Reversion. The commissioner of public lands upon the filing in his office by any person, firm or corporation owning any oyster lands within, or abutting upon, any state oyster reserve, of an application to purchase any tract or parcel of tideland lying between said oyster land and the adjoining shore, or any small or isolated tract of tideland, not exceeding three acres in extent, lying between his said oyster lands and any adjoining oyster lands heretofore sold by the state, accompanied by an abstractor's certificate of title or other evidence of title to the applicant's oyster lands demanded by the commissioner of public lands, and by the field notes of a survey and plat of the lands applied for, the commissioner of public lands shall examine such evidence of title and such field notes and plat and cause the land applied for to be inspected, and if he shall find that the title to the adjoining land is in the applicant and that the land applied for is of little value to the state for the future development of the state's oyster reserves, due to its size and isolation, he shall thereupon appraise the value of the land applied for, and upon the payment of the appraised value to the commissioner of public lands cause a deed to be issued for the land applied for in the same manner as deeds of state lands are issued, which deed shall contain a covenant or condition of defeasance to the effect that if said lands be used for any other purpose than the cultivation of oysters or edible shell fish, then such deed shall be canceled and the lands described therein revert to the state: *Provided*, That if the tract of land applied for is located between the lands of two or more owners, then upon the application of either of the adjoining owners,

the others shall be notified of such application and given sixty days within which to apply for the purchase of said land, and if others of said adjoining owners make application to purchase said land, the commissioner of public lands shall determine an equitable division of said land between said applicants, and each shall be given the privilege of purchasing the part allotted to him, but if any of said adjoining owners fail for a period of sixty days to purchase said land at the appraised value, then the other adjoining owner, or owners, shall have the privilege of purchasing the land. [1927 c 255 § 138; RRS § 7797-138. Prior: 1919 c 165 §§ 1 through 3. Formerly RCW 79.20.120.]

Sale, lease, disposal of oyster reserves: RCW 75.24.030.

79.01.556 Contract in lieu of deed to small oyster tracts. In lieu of a deed as provided for in the preceding section, a contract may be issued to the applicant by the terms of which one-fifth of the purchase price may be paid to the commissioner, and the remainder in four equal annual installments, with interest on deferred payments at the rate of six percent per annum, and if said applicant shall comply with the terms of said contract and make the payments therein provided for, a deed shall issue as provided in the preceding section: *Provided*, That said contract shall contain a covenant of defeasance as is provided in the case of a deed issued under the provisions of the preceding section: *And provided further*, That such contract shall be subject to cancellation by the commissioner of public lands for failure to comply with its provisions: *And provided further*, That whenever an installment shall mature, the contract holder may, if he so elect, pay more than one installment. All moneys received for the sale of tidelands under the provisions of this and the preceding section shall be paid into the state treasury to the credit of the state oyster reserve fund. [1927 c 255 § 139; RRS § 7797-139. Prior: 1919 c 165 §§ 4, 5. Formerly RCW 79.20.130.]

Reviser's note: The "state oyster reserve fund" was abolished and the moneys therein were transferred to the fisheries fund by 1939 c 56 which act was repealed by 1949 c 112. 1955 c 12 reenacted 1949 c 112. Compare 1955 c 12 §§ 75.08.230 and 75.24.030 with RCW 79.01.552 and 79.01.556.

79.01.560 Sale of reserved or reversionary rights in tidelands. Upon an application to purchase the reserved and reversionary rights of the state in any tidelands sold under the provisions of chapter 24 of the Laws of 1895, or chapter 25 of the Laws of 1895, or chapter 165 of the Laws of 1919, or the provisions of RCW 79.01.552, or either such reserved or reversionary right if only one exist, being filed in the office of the commissioner of public lands by the owner of such tidelands, accompanied by an abstractor's certificate, or other evidence of the applicant's title to such lands, the commissioner of public lands, if he find the applicant is the owner of the tidelands, is authorized to inspect, appraise and sell, for not less than the appraised value, such reserved or reversionary rights of the state to the applicant, and upon payment of the purchase price to cause a deed to be issued therefor as in the case of the sale of state lands, or

upon the payment of one-fifth of the purchase price, to issue a contract of sale therefor, providing that the remainder of the purchase price may be paid in four equal annual installments, with interest on deferred payments at the rate of six percent per annum, or sooner at the election of the contract holder, which contract shall be subject to cancellation by the commissioner of public lands for failure to comply with its provisions, and upon the completion of the payments as provided in such contract to cause a deed to the lands described in the contract to be issued to the holder thereof as in the case of the sale of state lands. [1927 c 255 § 140; RRS § 7797-140. Prior: 1925 ex.s. c 190 §§ 1, 2. Formerly RCW 79.20.140.]

Reviser's note: Chapters 24 and 25 of the Laws of 1895 have been repealed by 1935 c 47 and chapter 165 of the Laws of 1919 has been repealed by 1935 c 115.

79.01.564 Location of line dividing tidelands from shorelands in tidal rivers. The commissioner of public lands is hereby authorized to locate in all navigable rivers in this state, which are subject to tidal flow, the line dividing the tidelands in such river from the shorelands in such river and such classification or the location of such dividing line shall be final and not subject to review, and the commissioner shall enter the location of said line upon the plat of the tide and shore lands affected. [1927 c 255 § 141; RRS § 7797-141. Formerly RCW 43.12.090.]

79.01.568 Leasing for oyster beds, cultivating clams or other shellfish—Authorized. The beds of all navigable tidal waters in this state lying below extreme low tide not in front of any incorporated city or town, nor within two miles on either side thereof, shall be subject to lease for the purpose of planting and cultivating thereon oyster beds, or for the purpose of cultivating clams or other edible shellfish for periods not to exceed ten years.

Where the lands are used for the cultivation of oysters, the parcels leased shall not exceed forty acres.

Where the lands are used for the cultivation of clams or other edible shellfish, the commissioner may, in his discretion, grant leases for larger parcels.

Nothing in *this 1967 amendatory act shall prevent any person from leasing more than one parcel, as offered by the commissioner. [1967 c 228 § 1; 1963 c 79 § 1; 1961 c 73 § 9; 1951 c 271 § 39; 1927 c 255 § 142; RRS § 7797-142. Prior: 1899 c 136 § 1. Formerly RCW 79.20.010.]

***Reviser's note:** "this 1967 amendatory act" refers to chapter 228, Laws of 1967, which amended RCW 79.01.568, 79.01.576, 79.01.584, 79.01.588 and 79.01.592.

Interference with shellfish: RCW 9.61.040.

Sanitary control of shellfish: Chapter 69.30 RCW.

Shellfish: Chapter 75.24 RCW.

79.01.572 Leasing for oyster beds, cultivating clams or other shellfish—Who may lease—Application—Deposit. Any person desiring to lease lands for the purpose of planting and cultivating thereon oyster beds or for the purpose of cultivating clams and other edible

shellfish, shall file with the commissioner of public lands, on a proper form an application in writing signed by the applicant and accompanied by a map of the land desired to be leased, describing the lands by metes and bounds tied to at least two United States government corners, and by such reference to local geography as shall suffice to convey a knowledge of the location of the lands with reasonable accuracy to persons acquainted with the vicinity, and accompanied by a deposit of ten dollars which deposit shall be returned to the applicant in case a lease is not granted. [1967 c 163 § 5; 1927 c 255 § 143; RRS § 7797-143. Prior: 1899 c 136 §§ 3, 5. Formerly RCW 79.20.020.]

1967 Act adopted to implement Amendment 42—Severability—1967 c 163: See notes following RCW 64.16.005.

79.01.576 Leasing for oyster beds, cultivating clams or other shellfish—Inspection and report by director of fisheries—Rental and term. The commissioner, upon the receipt of an application for a lease for the purpose of planting and cultivating oyster beds or for the purpose of cultivating clams or other edible shellfish, shall notify the director of fisheries of the filing of the application, describing the lands applied for. The director of fisheries shall cause an inspection of the lands applied for to be made and shall make a full report to the commissioner of his findings as to whether it is necessary, in order to protect existing natural oyster beds, and to secure adequate seeding thereof, to retain the lands described in the application for lease or any part thereof, and in the event the director deems it advisable to retain the lands or any part thereof for the protection of existing natural oyster beds or to guarantee the continuance of an adequate seed stock for existing natural oyster beds, the same shall not be subject to lease. However, if the director determines that the land applied for or any part thereof may be leased, he shall so notify the commissioner of public lands and the director shall cause an examination of the lands to be made to determine the presence, if any, of natural oysters, clams or other edible shellfish on said lands, and to fix the rental value of the land for use for oyster, clam, or other edible shellfish, cultivation. In his report to the commissioner, the director shall recommend a minimum rental price for said land and an estimation of the value of the oysters, clams, or other edible shellfish, if any, then present on the lands applied for. The lands approved by the director for lease may then be leased to the applicant for a period of not less than five years nor more than ten years at a rental not less than the minimum rental recommended by the director of fisheries. In addition, before entering upon possession of the land, the applicant shall pay the value of the oysters, clams, or other edible shellfish, if any, then present on the land as determined by the director, plus the expense incurred by the director in investigating the quantity of oysters, clams, or other edible shellfish, present on the land applied for. [1967 c 228 § 3; 1951 c 271 § 40; 1927 c 255 § 144. Prior: 1927 c 255 §§ 145, 147; 1923 c 59 § 1; 1899 c 136 §§ 3, 4. Formerly RCW 79.20.030.]

Director of fisheries: Title 75 RCW.

79.01.580 Leasing for oyster beds, cultivating clams or other shellfish—Survey and boundary markers. Before entering into possession of the leased lands the applicant shall cause the same to be surveyed by a registered land surveyor, and he shall furnish to the commissioner of public lands and to the director of fisheries a map of the leased premises signed and certified by the registered land surveyor. The lessee shall also cause the boundaries of the leased premises to be marked by piling monuments or other markers of a permanent nature as the director of fisheries may direct. [1951 c 271 § 41 (adding a new section to 1927 c 255). Formerly RCW 79.20.035.]

Destruction of oyster bed, stake or buoy: RCW 9.61.040.

Registered land surveyors: Chapter 18.43 RCW.

79.01.584 Leasing for oyster beds, cultivating clams or other shellfish—Renewal lease. The commissioner of public lands may, upon the filing of an application for a renewal lease, cause the lands to be inspected, and if he deem it for the best interests of the state to re-lease said lands, he shall issue to the applicant a renewal lease for such further period not exceeding ten years and under such terms and conditions as may be determined by the commissioner. In case of an application for a renewal lease it shall not be necessary for the lands to be inspected and reported upon by the director of fisheries and game. [1967 c 228 § 4; 1927 c 255 § 146; RRS § 7797–146. Prior: 1923 c 59 § 1. Formerly RCW 79.20.050.]

Reviser's note: The powers and duties of the "director of fisheries and game" relating to oysters have devolved on the director of fisheries through a chain of statutes as follows: 1933 c 3; 1949 c 112; 1955 c 12; see Title 75 RCW.

79.01.588 Leasing for oyster beds, cultivating clams or other shellfish—Reversion for use other than cultivation of shellfish. All leases of lands for the purpose of planting and cultivating oyster beds, clam beds, or other edible shellfish beds, shall expressly provide that if at any time after the granting of said lease, the lands described therein shall cease to be used for the purpose of oyster beds, clam beds, or other edible shellfish beds, they shall thereupon revert to and become the property of the state and that the same are leased only for the purpose of cultivating oysters, clams, or other edible shellfish thereon, and that the state reserves the right to enter upon and take possession of said lands if at any time the same are used for any other purpose than the cultivation of oysters, clams, or other edible shellfish. [1967 c 228 § 5; 1927 c 255 § 148; RRS § 7797–148. Prior: 1899 c 136 § 7. Formerly RCW 79.20.070.]

79.01.592 Leasing for oyster beds, cultivating clams or other shellfish—Abandonment—Application for other lands. If from any cause any lands leased for the purpose of planting and cultivating oyster beds, clam beds, or other edible shellfish beds, shall become unfit and valueless for any such purposes, the lessee or his assigns, upon certifying such fact under oath to the

commissioner of public lands, together with the fact that he has abandoned such land, shall be entitled to make application for other lands for such purposes. [1967 c 228 § 6; 1927 c 255 § 149; RRS § 7797–149. Prior: 1899 c 136 § 10. Formerly RCW 79.20.080.]

79.01.596 Use of tide and shore lands granted to United States—Purposes—Limitations. The use of any tide and shore lands belonging to the state, and adjoining and bordering on any tract, piece or parcel of land, which may have been reserved or acquired, or which may hereafter be reserved or acquired, by the government of the United States, for the purpose of erecting and maintaining thereon forts, magazines, arsenals, dock yards, navy yards, penitentiaries, lighthouses, fog signal stations, aviation fields, or other aids to navigation, be and the same is hereby granted to the United States, so long as the upland adjoining such tide or shore lands shall continue to be held by the government of the United States for any of the public purposes above mentioned: *Provided*, That this grant shall not extend to or include any lands covered by more than four fathoms of water at ordinary low tide; and shall not be construed to prevent any citizen of the state from using said lands for the taking of food fishes so long as such fishing does not interfere with the public use of them by the United States. [1927 c 255 § 150; RRS § 7797–150. Prior: 1909 c 110 § 1; 1890 p 428 § 1. Formerly RCW 79.32.010.]

79.01.600 Use of tide and shore lands granted to United States—Application—Proof of upland use—Conveyance. Whenever application is made to the commissioner of public lands by any department of the United States government for the use of any tide or shore lands belonging to the state and adjoining and bordering on any upland held by the United States for any of the purposes mentioned in the preceding section, upon proof being made to said commissioner of public lands that such uplands are so held by the United States for such purposes, he shall cause such fact to be entered in the records of his office and shall certify such fact to the governor and who shall execute a deed, in the name of the state attested by the secretary of state, conveying the use of such lands, for said purposes, to the United States, so long as it shall continue to hold for said public purposes the uplands adjoining said tide and shore lands. [1927 c 255 § 151; RRS § 7797–151. Prior: 1909 c 110 § 2. Formerly RCW 79.32.020.]

79.01.604 Use of tide and shore lands granted to United States—Easements over tide or shore lands to United States. Whenever application is made to the commissioner of public lands, by any department of the United States government, for the use of any tide or shore lands belonging to the state, for any public purpose, and said commissioner shall be satisfied that the United States requires or may require the use of such tide or shore lands for such public purpose, said commissioner may reserve such tide or shore lands from public sale and grant the use of them to the United States, so long as it may require the use of them for

such public purposes; and the commissioner of public lands shall certify such fact to the governor, who shall thereupon execute an easement to the United States, which shall be attested by the secretary of state, granting the use of such tide or shore lands to the United States, so long as it shall require the use of them for said public purpose. [1927 c 255 § 152; RRS § 7797-152. Prior: 1909 c 110 § 3. Formerly RCW 79.32.030.]

79.01.608 Use of tide and shore lands granted to United States—Reversion on cessation of use. Whenever the United States shall cease to hold and use any uplands for the use and purpose mentioned in RCW 79.01.596 or shall cease to use any tide or shore lands for the purpose mentioned in RCW 79.01.604, the grant or easement of such tide or shore lands shall be terminated thereby, and said tide or shore lands shall revert to the state without resort to any court or tribunal. [1927 c 255 § 153; RRS § 7797-153. Prior: 1909 c 110 § 4. Formerly RCW 79.32.040.]

79.01.612 Management of acquired lands—Rental—Repairs. The commissioner of public lands shall have the power and it shall be his duty to manage and control all lands acquired by the state by escheat or operation of law and all lands acquired by the state by deed of sale or gift or by devise, except such lands as are conveyed or devised to the state to be used for a particular purpose and he shall cause such lands to be inspected, appraised, managed, leased or sold in the same manner as is prescribed in this chapter for the sale or lease of state lands, other than capitol building lands, and the proceeds of the lease or sale of all such lands shall be covered into the common school fund in the state treasury in the manner prescribed by law: *Provided*, That if the grantor in any such deed or the testator in case of a devise shall specify that the proceeds of the sale or lease of such lands shall be devoted to a particular purpose such proceeds shall be so applied: *And provided further*, That the commissioner of public lands is authorized to employ an agent or agents to rent any improved escheated, deeded or devised urban property for such rental and time and in such manner as the commissioner may direct, but no such property shall be rented by such agent for a longer period than one year and no such tenant shall be entitled to compensation for any improvement which he shall make on such property. Such agent or agents shall cause such repairs to be made to such property as the commissioner of public lands may direct, and shall deduct the cost thereof, together with such compensation and commission as the commissioner shall authorize, from the rentals of such property and the remainder which shall have been collected shall be transmitted monthly to the commissioner of public lands. [1927 c 255 § 154; RRS § 7797-154. Formerly RCW 43.12.100.]

Real property distributed to state by probate court decree, jurisdiction of commissioner of public lands over: RCW 11.08.220.

79.01.616 Leases for prospecting and contracts for mining of valuable minerals and specified materials—Execution authorized—Lands subject to—Size of tracts. The department of natural resources shall have the power to execute leases, for prospecting, and contracts for the mining of valuable minerals and specified materials, except hydrocarbons, upon and from any public lands belonging to or held in trust by the state, or which have been sold and the minerals thereon reserved by the state, to any person, in tracts of not to exceed the equivalent of one section and not less than the equivalent of one-sixteenth of a section in legal subdivisions according to the United States government surveys. [1965 c 56 § 2; 1927 c 255 § 155; RRS § 7797-155. Prior: 1917 c 148 § 1; 1915 c 152 § 1; 1897 c 102 § 1. Formerly RCW 78.20.010, part, and 78.20.020.]

79.01.618 Leases for prospecting and contracts for mining of valuable minerals and specified materials—Rules and regulations. The department of natural resources shall have the authority to promulgate all reasonable rules and regulations necessary for carrying out the mineral leasing provisions of RCW 79.01.614 through 79.01.650. Such rules and regulations shall be enacted under the provisions of chapter 34.04 RCW. The department may amend or rescind any rules or regulations promulgated under the provisions of this section. The department shall publish these rules and regulations in pamphlet form for the information of the public. [1965 c 56 § 3.]

79.01.620 Leases for prospecting and contracts for mining of valuable minerals and specified materials—Application for lease—Fee—Rental advance—Rejection and forfeiture—Investigation and report. Any person desiring to obtain a lease or leases for mineral prospecting purposes upon any lands owned or administered by the department of natural resources, shall file in the proper office of the department of natural resources an application or applications therefor, upon the prescribed form, and shall pay to the department a rental of twenty-five cents per acre for the first year of such lease or leases, payable in advance to the department at the time of making application therefor, together with an application fee: *Provided*, That the department may reject the application and declare the first year's rental and the application fee forfeited should the applicant fail to complete and execute the lease. The department may upon receipt of an application for a prospecting lease cause an investigation and report to be made, such report to indicate improvements upon and to the land, the estimated amount of damage which might accrue to the land through prospecting or mining, and the mineral character of the land. [1965 c 56 § 4; 1927 c 255 § 156; RRS § 7797-156. Prior: 1917 c 148 § 2; 1901 c 151 §§ 1, 2; 1897 c 102 §§ 2, 5. Formerly RCW 78.20.010, part, and RCW 78.20.030.]

79.01.624 Leases for prospecting and contracts for mining of valuable minerals and specified materials—Application for lease or contract on land leased for other

purpose—Investigation and report—Compensation, security, for damages. In case the lands described in the application for a mineral prospecting lease or mining contract, shall have been leased for any other purpose than mineral prospecting or mining, and the minerals therein reserved by the state, the department of natural resources upon the filing of the application, shall at its option cause a full investigation and report to be made as to the nature and location of the lands applied for, and the estimated amount of damages that will accrue to such lands by reason of prospecting and/or mining therefrom.

The applicant shall provide compensation for all damages to the lessee's interest and to the state. In case the applicant has not provided for satisfactory compensation to the lessee's interest and to the state, the department may at its discretion require the filing of a cash or surety bond with the department in an amount sufficient in the opinion of the department to cover such compensation until the amount and payment of compensation has been provided for, in accordance with the rules and regulations adopted by the department. [1965 c 56 § 5; 1927 c 255 § 157; RRS § 7797-157. Prior: 1917 c 148 § 3; 1899 c 147 § 1; 1897 c 102 § 6. Formerly RCW 78.20.040.]

79.01.628 Leases for prospecting and contracts for mining of valuable minerals and specified materials—Term of lease—Rental—Right to remove materials—Royalties—Use of timber. Leases for prospecting purposes shall be for the term of two years from the date of the lease. The rental on the lease shall be twenty-five cents per acre per year payable in advance to the department of natural resources during the term of the lease. The lessee, or his assigns, shall have the right to extract and remove from the leased premises any minerals or specified materials found on the premises upon making application for conversion to a mining contract. Upon the commencement of actual mining, recovery, and saving of minerals and specified materials, a minimum royalty of two dollars and fifty cents per acre per year in lieu of an annual rental shall become effective.

The lessee will pay royalties to the state as provided in the mining contract and in the rules and regulations promulgated by the department. The minimum royalty shall be allowed as a credit against royalties due during the calendar year said minimum royalty is paid. The lessee, or his assigns, shall have the right to cut and use such timber found on the leased premises belonging to the state for mining and fuel as provided for in rules and regulations promulgated by the department. [1965 c 56 § 6; 1945 c 103 § 1; 1927 c 255 § 158; RRS § 7797-158. Prior: 1897 c 102 §§ 4, 5. Formerly RCW 78.20.050.]

79.01.632 Leases for prospecting and contracts for mining of valuable minerals and specified materials—Conversion of lease into contract—Preference—Time deduction—Fees and proofs—Nonconversion, effect. The holder of any prospecting lease, or his assigns, shall if he apply therefor to the department of

natural resources within sixty days prior to the expiration of the prospecting lease, have a preference right to a mining contract to the premises described in said lease, or any part thereof, upon the same terms and royalties as provided in the prospecting lease. Any contract issued upon conversion from a two year prospecting lease shall have deducted the time already expended on said prospecting lease.

At such time as application is made for a mining contract, the lessee shall submit evidence and proof of development work as provided for in rules and regulations promulgated by the department, together with the rental or minimum royalty and the application fee to the department.

Any lessee not converting a two year prospecting lease to a mining contract or being refused a contract by the department shall not be entitled to a new prospecting lease or mining contract on the premises leased for one year from the expiration date of the prior lease. Such lands included in said prospecting lease or contract conversion shall be open to application by any person other than the prior lessee, his agents or associates during the year period described above. [1965 c 56 § 7; 1927 c 255 § 159; RRS § 7797-159. Prior: 1901 c 151 § 4. Formerly RCW 78.20.060.]

79.01.633 Leases for prospecting and contracts for mining of valuable minerals and specified materials—Lessee's rights and duties relative to owner of surface rights. Where the surface rights have been sold and the minerals retained by the state, the state's right of entry to lands is hereby transferred and assigned to the lessee during the life of the contract and said lessee herewith shall be responsible for providing compensation to the owner of the surface rights for damages incurred through prospecting and mining. No lessee shall commence any operation upon lands covered by his lease or contract until such lessee has provided for compensation to the owners of private rights thereon according to law. [1965 c 56 § 8.]

79.01.634 Leases for prospecting and contracts for mining of valuable minerals and specified materials—Termination of lease or contract for default. The department of natural resources shall automatically terminate and cancel a prospecting lease or mining contract upon failure of the lessee to make payment of the annual rental or royalties or comply with the terms and conditions of said lease or contract upon the date such payments and compliances are due. The lessee shall be notified of such termination and cancellation, said notice to be mailed to the last known address of the lessee. Termination and cancellation shall become effective thirty days from the date of mailing said notice: *Provided*, That the department may, upon written request from the lessee, grant an extension of time in which to make such payment or comply with said terms and conditions. [1965 c 56 § 9.]

79.01.636 Leases for prospecting and contracts for mining of valuable minerals and specified materials—Mining contracts—Procedure for issuance—Prospecting period—Rents and royalties—Development work—Termination—Surrender of part—Removal of improvements. Any person desiring to obtain a contract or contracts for the mining of valuable minerals and specified materials, except hydrocarbons, shall file in the proper office of the department of natural resources an application or applications therefor upon the prescribed form together with the application fee required by law and the first year's rental in the amount of twenty-five cents per acre.

The department, upon the receipt of any such application for a mining contract, may cause a full investigation and report to be made as to the nature and location of the lands applied for, the location and extent of improvements upon and to the land, and the estimated amount of damages that will accrue to such lands by reason of prospecting or exploring thereon or extracting minerals or specified materials therefrom. The first four years of the contract shall be referred to as the prospecting or exploration period and shall require a rental of twenty-five cents per acre per year during the first and second years of the contract, the third and fourth years inclusive shall require an annual rental of fifty cents per acre, the fifth through the twentieth year shall be referred to as the mining period of the contract and shall require a minimum royalty of two dollars and fifty cents per acre per year in lieu of an annual rental. To retain the contract past the fourth year, the lessee shall pay in advance, the minimum annual royalty and submit proof and evidence of development work.

In case the lessee does not submit the required proof and evidence of development work and minimum annual royalty, the contract shall automatically terminate upon the expiration of the fourth year of such contract. The lessee, his agents or associates, shall not be eligible for a new contract or prospecting lease for one year from the expiration date of said contract. Lands covered by such terminated contract shall be open to application by any person other than the prior lessee, his agents or associates.

Upon the commencement of actual mining, recovery, and saving of any minerals or materials on the premises covered by the contract, during the prospecting or exploration period of the contract, the annual rental shall be changed to a minimum royalty of two dollars and fifty cents per acre per year, such minimum royalty to become effective upon the next succeeding anniversary date of said contract.

Beginning with the fifth year of the contract and for each year thereafter, the lessee shall perform development work or make improvements on the leased premises to an amount of not less than two dollars and fifty cents per acre per year or pay to the state the sum of two dollars and fifty cents per acre per year in lieu of the performance of said development work or improvements together with the minimum royalty of two dollars and fifty cents per acre. Development work and improvements reported must contribute to the mineral

and specified material development of the premises contained in the contract.

The lessee shall have the right at any time to terminate the contract or surrender to the state any one or more legal subdivisions contained in the contract insofar as it requires the lessee to pay rentals, royalties, perform work, or to mine minerals or specified materials on said land: *Provided*, That the remaining lands covered by the contract shall not be less than the equivalent of one-sixteenth of a section. Said termination by the lessee shall be made by giving written notice to the department of natural resources which, shall officially, in writing, acknowledge the receipt of such notice, and the contract shall terminate sixty days thereafter and all arrears and the sums which may be due under the contract up to the time of its termination shall be paid.

The lessee shall have sixty days from the termination date of the contract in which to remove all improvements from the premises without material damage to the land or subsurface covered by said contract, all such improvements remaining on the premises after sixty days shall become the property of the state of Washington: *Provided*, That the lessee may upon written request to the department be granted an extension where forces beyond the control of the lessee prevent removal of said improvements within sixty days. [1965 c 56 § 10; 1927 c 255 § 160; RRS § 7797-160. Prior: 1917 c 148 § 3; 1899 c 147 § 1; 1897 c 102 § 6. Formerly RCW 78.20.070.]

79.01.640 Leases for prospecting and contracts for mining of valuable minerals and specified materials—Leases and contracts, form, terms, and conditions—Subcontracts. Prospecting leases or mining contracts referred to in chapter 79.01 RCW shall be as prescribed by, and in accordance with rules and regulations promulgated by the department of natural resources.

The department is authorized to insert in any mineral prospecting lease or mining contract to be issued under the provisions of this chapter such terms and conditions as are customary and proper for the protection of the rights of the state and of the lessee not in conflict with the provisions of this chapter, or rules and regulations promulgated by the commissioner.

Any lessee shall have the right to contract with others to work or operate the leased premises or any part thereof or to subcontract the same and the use of said land or any part thereof for the purpose of mining for valuable minerals or specified materials, with the same rights and privileges granted to the lessee. Notice of such contracting or subcontracting with others to work or operate the property shall be made in writing to the department. [1965 c 56 § 11; 1927 c 255 § 161; RRS § 7797-161. Prior: 1917 c 148 § 3; 1899 c 147 § 1; 1897 c 102 § 6. Formerly RCW 78.20.080.]

79.01.644 Leases for prospecting and contracts for mining of valuable minerals and specified materials—Contracts—Royalty periods and rates—Renewal. Mining contracts entered into as provided in chapter 79.01 RCW shall, in addition to the provisions contained in the form specified, provide for the payment to

the state of royalties, payable at specified periods and rates to be agreed upon by the department of natural resources and the applicant, but which periods and rates shall be in accordance with the rules and regulations promulgated by the department. The lessee, or his assigns, may apply for the renewal of the contract to the department within ninety days prior to the expiration of said contract. Upon receipt of such application, the department shall make the necessary investigation to determine whether the terms of the contract have been complied with, and if he [it] finds they have been complied with in good faith, he [it] shall then be required to issue a new contract of the premises described in the present contract, or any part thereof, upon the same terms and percentages as are provided for in the present contract: *Provided*, That the prospecting or exploration period of the present contract shall be waived and the new contract shall specify an annual minimum royalty of not less than two dollars and fifty cents per acre. [1965 c 56 § 12; 1959 c 257 § 38; 1945 c 103 § 2; 1927 c 255 § 162; Rem. Supp. 1945 § 7797-162. Prior: 1917 c 148 § 4; 1901 c 151 § 3; 1897 c 89 § 7. Formerly RCW 78.20.090.]

79.01.648 Leases for prospecting and contracts for mining of valuable minerals and specified materials—Consolidation of contracts. The holders of two or more mining contracts may consolidate said contracts under a common management to permit proper operation of large scale developments. Notification of such consolidation shall be made to the department of natural resources, together with a statement of plans of operation and proposed consolidation. The department may thereafter make examinations and investigations and if it finds that such consolidation is not in the best interest of the state, it shall disapprove such consolidated operation. [1965 c 56 § 13; 1945 c 103 § 3 (adding a new section to 1927 c 255, section 162-1); Rem. Supp. 1945 § 7797-162a. Formerly RCW 78.20.100.]

79.01.649 Leases for prospecting and contracts for mining of valuable minerals and specified materials—State may enter lands and examine property and records—Disclosure of information. Any person designated by the department of natural resources shall have the right at any time to enter upon the lands and inspect and examine the structures, works, and mines situated thereon, and shall also have the right to examine such books, records, and accounts of the lessee as are directly connected with the determination of royalties on the property under lease from the state but it shall be unlawful for any person so appointed to disclose any information thus obtained to any person other than the departmental officials and employees, except the attorney general and prosecuting attorneys of the state. [1965 c 56 § 14.]

79.01.650 Leases for prospecting and contracts for mining of valuable minerals and specified materials—State may dispose of other materials—Disposition of timber. The state shall have the right to sell or otherwise dispose of any timber, sand, or gravel, except minerals

or materials specifically covered by a mineral prospecting lease or mining contract, found upon the land during the period covered by said lease or contract. The state shall also have the right to enter upon such land and remove same, and shall not be obliged to withhold from any sale any timber for prospecting or mining purposes: *Provided*, That the lessee shall be permitted to use timber as provided in this chapter and in rules and regulations promulgated by the department of natural resources. [1965 c 56 § 15.]

79.01.652 Coal mining—Leases and option contracts authorized. The commissioner of public lands is authorized to execute option contracts and leases for the mining and extraction of coal from any public lands of the state, or to which it may hereafter acquire title, or from any lands sold or leased by the state the minerals of which have been reserved by the state. [1927 c 255 § 163; RRS § 7797-163. Prior: 1925 ex.s. c 155 § 1. Formerly RCW 78.24.010.]

79.01.656 Coal mining—Application for option contract—Fee. Any citizen of the United States believing coal to exist upon any of the lands described in the preceding section may apply to the commissioner of public lands for an option contract for any amount not exceeding one section for prospecting purposes, such application to be made by legal subdivision according to the public land surveys. The applicant shall pay to the commissioner of public lands, at the time of filing his application, the sum of one dollar an acre for the lands applied for, but in no case less than fifty dollars. In case of the refusal of the commissioner to execute an option contract for the lands, any remainder of the sum so paid, after deducting the expense incurred by the commissioner in investigating the character of the land, shall be returned to the applicant. [1927 c 255 § 164; RRS § 7797-164. Prior: 1925 ex.s. c 155 § 2. Formerly RCW 78.24.020.]

79.01.660 Coal mining—Investigation—Grant of option contract—Rights and duties of option contract holder. Upon the filing of any such application, the commissioner of public lands shall forthwith investigate the character of the lands applied for, and if, from such investigation, he deems it to the best interests of the state he shall enter into an option contract with the applicant.

The holder of any option contract shall be entitled, during the period of one year from the date thereof, to enter upon the lands and carry on such work of exploration, examination and prospecting for coal as may be necessary to determine the presence of coal upon the lands and the feasibility of mining the same. He shall have the right to use such timber found upon the lands and owned by the state as may be necessary for steam purposes and timbering in the examination and prospecting of such lands: *Provided*, That this provision shall not be construed to require the state to withhold any such timber from sale. No coal shall be removed from such lands during the period of such option contract except for samples and testing. At the expiration

of the option contract, the applicant shall fill or cover in a substantial manner all prospect holes and shafts, or surround the same with substantial fences, and shall file with the commissioner of public lands a report showing in detail the result of his investigation and prospecting. [1927 c 255 § 165; RRS § 7797-165. Prior: 1925 ex.s. c 155 § 3. Formerly RCW 78.24.030.]

79.01.664 Coal mining—Action to determine damage to surface owner or lessee—Commencement of option contract delayed. In the case of lands which the state may have sold or leased and reserved the mineral rights therein, if the holder of any option contract or lease shall be unable to agree with the owner or prior lessee of the lands, he shall have a right of action in the superior court of the county in which the land is situated to ascertain and determine the amount of damages which will accrue to such owner or lessee of the land by reason of the entry thereon and prospecting for or mining coal, as the case may be. In the event of any such action, the term of the option contract or lease shall begin thirty days after the entry of the final judgment in such action. [1927 c 255 § 166; RRS § 7797-166. Prior: 1925 ex.s. c 155 § 4. Formerly RCW 78.24.070.]

79.01.668 Coal mining—Lease—Application, terms, royalties, forfeiture. At any time during the life of the option contract, the holder thereof may apply to the commissioner of public lands for a coal mining lease of the lands included therein, or such portion thereof as he may specify, for the purpose of mining and extraction of coal therefrom. Such coal mining lease shall be for such term, not more than twenty years, and in such form as may be prescribed by the commissioner of public lands, shall entitle the lessee to mine and sell and dispose of all coal underlying said lands and to occupy and use so much of the surface thereof as may be necessary for bunkers and other outside works, and for railroads, buildings, appliances and appurtenances in connection with the mining operations. Such lease shall provide for the payment to the state of a royalty, according to the grade of coal, for each ton of two thousand two hundred and forty pounds of merchantable coal taken from the lands, as follows: For lignite coal of the class commonly found in Lewis and Thurston counties, not less than ten cents per ton; for subbituminous coal, not less than fifteen cents per ton; for high grade bituminous and coking coals, not less than twenty cents per ton; but such lease shall provide for the payment each year of a minimum royalty of not less than one nor more than ten dollars an acre for the lands covered thereby: *Provided*, That the commissioner of public lands may agree with the lessee that said minimum royalty shall be graduated for the different years of said lease so that a lower minimum royalty shall be paid during the earlier years of the term. The minimum royalty fixed in the lease shall be paid in advance each year, and the lessee, at stated periods during the term of the lease, fixed by the commissioner, shall furnish to the commissioner of public lands a written report under oath showing the amount of merchantable coal taken from the land during the period covered by such report

and shall remit therewith such sum in excess of the minimum royalty theretofore paid for the current year as may be payable as royalty for the period covered by such report.

Failure on the part of any lessee to comply with the foregoing provisions, or of his lease, shall work a forfeiture of the lease, and no such forfeiture may be waived. The commissioner shall incorporate in every lease such provisions and conditions not inconsistent with the provisions of this chapter and not inconsistent with good coal mining practice as he shall deem necessary and proper for the protection of the state, and, in addition thereto, the commissioner shall be empowered to prescribe such rules and regulations, not inconsistent with this chapter and not inconsistent with good mining practice, governing the manner and methods of mining as in his judgment are necessary and proper. [1927 c 255 § 167; RRS § 7797-167. Prior: 1925 ex.s. c 155 § 5. Formerly RCW 78.24.040.]

79.01.672 Coal mining—Lease without option contract. In the case of lands known to contain workable coal, the commissioner may, in his discretion, issue coal mining leases under the foregoing provisions although no option contract has been theretofore issued for such lands. [1927 c 255 § 168; RRS § 7797-168. Prior: 1925 ex.s. c 155 § 6. Formerly RCW 78.24.050.]

79.01.676 Coal mining—Inspection of works and records—Information confidential. The commissioner of public lands or any person designated by him shall have the right at any time to enter upon the lands and inspect and examine the structures, works and mines situated thereon, and shall also have the right to examine such books, records and accounts of the lessee as are directly connected with the operation of the mine on the property under lease from the state; but it shall be unlawful for the commissioner or any person so appointed to disclose any information thus obtained to any person other than the commissioner of public lands and his employees, except the attorney general and prosecuting attorneys of the state. [1927 c 255 § 169; RRS § 7797-169. Prior: 1925 ex.s. c 155 § 7. Formerly RCW 78.24.060.]

Coal mining code: Chapter 78.40 RCW.

79.01.680 Coal mining—Use and sale of materials from land. The state shall have the right to sell or otherwise dispose of any timber, stone or other valuable materials, except coal, found upon the land during the period covered by any option contract, or lease issued under the foregoing provisions, with the right to enter upon such lands and cut and remove the same, and shall not be obliged to withhold from sale any timber for coal mining or prospecting purposes: *Provided*, That the lessee shall be permitted to use in his mining operations any timber found upon the land, first paying therefor to the commissioner of public lands the value thereof as fixed by said commissioner: *And provided further*, That any bill of sale for the removal of timber, stone or other material given subsequent to the coal

lease shall contain provisions preventing any interference with the operations of the coal lease. [1927 c 255 § 170; RRS § 7797-170. Prior: 1925 ex.s. c 155 § 8. Formerly RCW 78.24.080.]

79.01.684 Coal mining—Suspension of mining—Termination of lease. Should the lessee for any reason, except strikes or inability to mine or dispose of his output without loss, suspend mining operations upon the lands included in his lease, or upon any contiguous lands operated by him in connection therewith, for a period of six months, or should the lessee for any reason suspend mining operations upon the lands included in his lease or in such contiguous lands for a period of twelve months, the commissioner of public lands may, at his option, cancel the lease, first giving thirty days' notice in writing to the lessee.

The lessee shall have the right to terminate the lease after thirty days' written notice to the commissioner of public lands and the payment of all royalties and rentals then due. [1927 c 255 § 171; RRS § 7797-171. Prior: 1925 ex.s. c 155 § 9. Formerly RCW 78.24.090.]

79.01.688 Coal mining—Condition of premises on termination of lease—Removal of personalty. Upon the termination of any lease issued under the foregoing provisions, the lessee shall surrender the lands and premises and leave in good order and repair all shafts, slopes, airways, tunnels and watercourses then in use. Unless the coal therein is exhausted, he shall also, as far as it is reasonably practicable so to do, leave open to the face all main entries then in use so that the work of further development and operation may not be unnecessarily hampered. He shall also leave on the premises all buildings and other structures, but shall have the right to, without damage to such buildings and structures, remove all tracks, machinery and other personal property. [1927 c 255 § 172; RRS § 7797-172. Prior: 1925 ex.s. c 155 § 10. Formerly RCW 78.24.100.]

79.01.692 Coal mining—Re-lease—Procedure—Preference to lessee. If at the expiration of any lease for the mining and extraction of coal or any renewal thereof the lessee desires to re-lease the lands covered thereby, he may make application to the commissioner of public lands for a re-lease. Such application shall be in writing and under oath, setting forth the extent, character and value of all improvements, development work and structures existing upon the land. The commissioner of public lands may on the filing of such application cause the lands to be inspected, and if he deems it for the best interests of the state to re-lease said lands, he shall fix the royalties for the ensuing term in accordance with the foregoing provisions relating to original leases, and issue to the applicant a renewal lease for a further term; such application for a release when received from the lessee, or successor of any lessee, who has in good faith developed and improved the property in a substantial manner during his original lease to be given preference on equal terms against the application of any new applicant. [1927 c 255 § 173;

RRS § 7797-173. Prior: 1925 ex.s. c 155 § 11. Formerly RCW 78.24.110.]

79.01.696 Coal mining—Waste prohibited. It shall be unlawful for the holder of any coal mining option contract, or any lessee, to commit any waste upon the lands embraced therein, except as may be incident to his work of prospecting or mining. [1927 c 255 § 174; RRS § 7797-174. Prior: 1925 ex.s. c 155 § 12. Formerly RCW 78.24.120.]

79.01.700 Oil and gas leases on state lands. [1955 c 131. Prior: 1951 c 146 § 37; 1937 c 161; 1927 c 255 §§ 175-185; RRS §§ 7797-175 through 7797-185s.] See chapter 79.14.

79.01.704 Witnesses—Compelling attendance, production of books, etc. In all hearings pertaining to public lands of the state, as provided by this chapter, the board of natural resources, or the commissioner of public lands, as the case may be, shall, in its or his discretion have power to issue subpoenas and compel thereby the attendance of witnesses and the production of books and papers, at such time and place as may be fixed by the board, or the commissioner, to be stated in the subpoena and to conduct the examination thereof.

Said subpoena may be served by the sheriff of any county, or by any officer authorized by law to serve process, or by any person eighteen years of age or over, competent to be a witness, but who is not a party to the matter in which the subpoena is issued.

Each witness subpoenaed by the board, or commissioner, as a witness on behalf of the state, shall be allowed the same fees and mileage as provided by law to be paid witnesses in courts of record in this state, said fees and mileage to be paid by warrants on the general fund from the appropriation for the office of the commissioner of public lands.

Any person duly served with a subpoena, as herein provided, and who shall fail to obey the same, without legal excuse, shall be considered in contempt, and the board, or commissioner, shall certify the facts thereof to the superior court of the county in which such witness may reside, and upon legal proof thereof, such witness shall suffer the same penalties as are now provided in like cases for contempt of court and the certificate of the board, or commissioner, shall be considered by the court as prima facie evidence of the guilt of the party charged with contempt. [1971 ex.s. c 292 § 54; 1959 c 257 § 39; 1927 c 255 § 186; RRS § 7797-186. Prior: 1897 c 89 § 59; 1895 c 223 § 93. Formerly RCW 79.08.010.]

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

Contempts: Chapters 7.20 and 9.23 RCW.

Punishment for contempt: RCW 2.28.020 and 5.56.061 through 5.56.080.

Witness fees, generally: Chapter 2.40 RCW.

79.01.708 Maps and plats—Record and index—Public inspection. All maps, plats and field notes of surveys, required to be made by this chapter shall, after approval by the board of state land commissioners, or

the commissioner of public lands, as the case may be, be deposited and filed in the office of the commissioner of public lands, who shall keep a careful and complete record and index of all maps, plats and field notes of surveys in his possession, in well bound books, which shall at all times be open to public inspection. [1927 c 255 § 187; RRS § 7797-187. Formerly RCW 43.12.110.]

79.01.712 Seal. All notices, orders, contracts, certificates, rules and regulations, or other documents or papers made and issued by or on behalf of the board of state land commissioners, or the commissioner of public lands, as provided in this chapter, shall be authenticated by a seal whereon shall be the vignette of George Washington, with the words "Seal of the commissioner of public lands, State of Washington." [1927 c 255 § 188; RRS § 7797-188. Formerly RCW 43.65.070.]

79.01.716 Distraint or sale of improvements for taxes. Whenever improvements have been made on tidelands or lands under water, in front of cities or towns, prior to the location of harbor lines in front of such cities or towns, and the reserved harbor area as located includes such improvements, no distraint or sale of such improvements for taxes shall be had until six months after said lands have been leased or offered for lease, but this section shall not affect or impair the lien for taxes on said improvements. [1927 c 255 § 189; RRS § 7797-189. Prior: 1897 c 89 § 61. Formerly RCW 79.16.420.]

79.01.720 Fees. The commissioner of public lands for services performed by him, may charge and collect the following fees: (1) For a copy of any record, document, or paper on file in his office, one dollar per page; (2) for affixing a certificate and seal, one dollar; (3) for each original contract of sale, lease, or bill of sale, five dollars; (4) for each deed, five dollars; (5) for issuance of each harbor area lease and approval of bond, five dollars; (6) for approval of each assignment of contract, lease, or bill of sale, five dollars; (7) for subdivision and issuance of new contracts, after the original has been entered on the records, five dollars for each contract; (8) for each right of way certificate issued, five dollars. [1959 c 153 § 1; 1927 c 255 § 190; RRS § 7797-190. Formerly RCW 43.12.120.]

79.01.724 Fee book—Verification. The commissioner of public lands shall keep a fee book, in which shall be entered all fees received by him, with the date paid and the name of the person paying the same, and the nature of the services rendered for which the fee is charged, which book shall be verified monthly by his affidavit entered therein, and all fees collected by him shall be paid into the state treasury in the manner and at the time provided by law for the payment of moneys received by state officers, and the receipt of the state treasurer taken therefor and retained in the office of the commissioner of public lands as a voucher. [1927 c 255 § 191; RRS § 7797-191. Formerly RCW 43.12.130.]

79.01.728 Assessments paid to be added to purchase price of land. When any public land of the state as defined in this chapter shall have been assessed for local improvements, or for benefits, by any municipal corporation authorized by law to assess the same, and such assessments have been paid by the state, and such land is offered for sale, there shall be added to the value of such land, appraised as provided by this chapter, the amount of assessments paid by the state, which amount so added shall be paid by the purchaser, in case of sale, in equal annual installments at the same time, and with the same rate of interest upon deferred payments, as the installments of the purchase price are paid, in addition to the amounts otherwise due to the state for said land, and no deed shall be executed until such assessments have been paid. [1927 c 255 § 192; RRS § 7797-192. Prior: 1925 ex.s. c 180 § 1; 1909 c 154 § 7; 1907 c 73 § 3; 1905 c 144 § 5. Formerly RCW 79.44.110.]

Assessments paid by state to be added to purchase price of land: RCW 79.44.095.

79.01.732 Appearance before United States land offices. The commissioner of public lands is authorized and directed to appear before the United States land offices in all cases involving the validity of the selections of any lands granted to the state, and to summon witnesses and pay necessary witness fees and stenographer fees in such contested cases. [1927 c 255 § 193; RRS § 7797-193. Formerly RCW 43.12.070.]

79.01.736 Duty of attorney general—Commissioner may represent state. It shall be the duty of the attorney general, to institute, or defend, any action or proceeding to which the state, or the commissioner of public lands, or the board of natural resources, is or may be a party, or in which the interests of the state are involved, in any court of this state, or any other state, or of the United States, or in any department of the United States, or before any board or tribunal, when requested so to do by the commissioner of public lands, or the board of natural resources, or upon his own initiative.

The commissioner of public lands is authorized to represent the state in any such action or proceeding relating to any public lands of the state. [1959 c 257 § 40; 1927 c 255 § 194; RRS § 7797-194. Prior: 1909 c 223 § 7; 1897 c 89 § 65; 1895 c 178 § 100. Formerly RCW 79.08.020.]

79.01.740 Reconsideration of official acts. The board of state land commissioners, or the commissioner of public lands, may review and reconsider any of its, or his, official acts relating to the public lands of the state until such time as a lease, contract or deed shall have been made, executed and finally issued, and the commissioner of public lands may recall any lease, contract or deed issued for the purpose of correcting mistakes or errors, or supplying omissions. [1927 c 255 § 195; RRS § 7797-195. Formerly RCW 43.65.080.]

79.01.744 Biennial report. It shall be the duty of the commissioner of public lands to report, and recommend, to each session of the legislature, any changes in the law relating to the methods of handling the public lands of the state that he may deem advisable. [1927 c 255 § 196; RRS § 7797-196. Prior: 1907 c 114 § 1; RRS § 7801. Formerly RCW 43.12.150.]

79.01.748 Trespasser guilty of larceny, when. Every person who wilfully commits any trespass upon any public lands of the state and cuts down, destroys or injures any timber, or any tree standing or growing thereon, or takes, or removes, or causes to be taken, or removed, therefrom any wood or timber lying thereon, or maliciously injures or severs anything attached thereto, or the produce thereof, or digs, quarries, mines, takes or removes therefrom any earth, soil, stone, mineral, clay, sand, gravel, or any valuable materials, shall be guilty of larceny. [1927 c 255 § 197; RRS § 7797-197. Prior: 1889-90 pp 124-125 §§ 1, 4. Formerly RCW 79.40.010.]

79.01.752 Lessee or contract holder guilty of misdemeanor, when. Every person being in lawful possession of any public lands of the state, under and by virtue of any lease or contract of purchase from the state, cuts down, destroys or injures, or causes to be cut down, destroyed or injured, any timber standing or growing thereon, or takes or removes, or causes to be taken or removed, therefrom, any wood or timber lying thereon, or maliciously injures or severs anything attached thereto, or the produce thereof, or digs, quarries, mines, takes or removes therefrom, any earth, soil, clay, sand, gravel, stone, mineral or other valuable material, or causes the same to be done, or otherwise injures, defaces or damages, or causes to be injured, defaced or damaged, any such lands unless expressly authorized so to do by the lease or contract under which he holds possession of such lands, or by the provisions of law under and by virtue of which such lease or contract was issued, shall be guilty of a misdemeanor. [1927 c 255 § 198; RRS § 7797-198. Prior: 1899 c 34 §§ 1 through 3. Formerly RCW 79.40.020.]

79.01.756 Removal of timber, manufacture into articles—Treble damages. Every person who shall cut or remove, or cause to be cut or removed, any timber growing or being upon any public lands of the state, or who shall manufacture the same into logs, bolts, shingles, lumber or other articles of use or commerce, unless expressly authorized so to do by a bill of sale from the state, or by a lease or contract from the state under which he holds possession of such lands, or by the provisions of law under and by virtue of which such bill of sale, lease or contract was issued, shall be liable to the state in treble the value of the timber or other articles so cut, removed or manufactured, to be recovered in a civil action, and shall forfeit to the state all interest in and to any article into which said timber is manufactured. [1927 c 255 § 199; RRS § 7797-199. Prior: 1897 c 89 § 66; 1895 c 178 § 101. Formerly RCW 79.40.030.]

Cascara bark peeling: Chapter 19.08 RCW.

Cutting or destroying trees without authority: RCW 9.61.040 and 76.04.397.

Cutting permits: RCW 76.08.030.

Firewood on state lands: Chapter 76.20 RCW.

Injunction to prevent waste on public land: RCW 64.12.050.

Injury to or removing trees, etc.—Damages: RCW 64.12.030.

Penalty for destroying native flora: RCW 47.40.080.

79.01.760 Trespass, waste, damages—Prosecutions. The commissioner of public lands is authorized and directed to investigate all trespasses and wastes upon, and damages to, public lands of the state, and to cause prosecutions for, and/or actions for the recovery of, the same, to be commenced as is provided by law. [1927 c 255 § 200; RRS § 7797-200. Prior: 1897 c 89 § 64; 1895 c 178 § 99. Formerly RCW 79.40.040.]

Waste and trespass: Chapter 64.12 RCW.

79.01.770 School districts, institutions of higher education, purchase of leased lands with improvements by—Authorized—Exception—Time limitation—Price. Notwithstanding the provisions of RCW 79.01.096 or any other provision of law, any school district or institution of higher education, that on August 9, 1971 is leasing land granted to the state by the United States and on which land by January 1, 1976, such district or institution has placed improvements as defined in RCW 79.01.036 shall be afforded the opportunity by the department of natural resources at any time prior to January 1, 1976, to purchase such land, excepting land over which the department retains management responsibilities, for the purposes of schoolhouse construction and/or necessary supporting facilities or structures at the appraised value thereof less the value that any improvements thereon added to the value of the land itself at the time of the sale thereof. [1971 ex.s. c 200 § 2.]

Severability—1971 ex.s. c 200: See note following RCW 79.01.096.

79.01.774 School districts, institutions of higher education, purchase of leased lands with improvements by—Certain purchases classified—Payable out of common school construction fund. The purchases authorized under RCW 79.01.770 shall be classified as for the construction of common school plant facilities under chapter 28A.47 RCW and shall be payable out of the common school construction fund as otherwise provided for in RCW 28A.40.100 if the school district involved was under emergency school construction classification as established by the state board of education at any time during the period of its lease of state lands. [1971 ex.s. c 200 § 3.]

Severability—1971 ex.s. c 200: See note following RCW 79.01.096.

79.01.778 School districts, institutions of higher education, purchase of leased lands with improvements by—Extension of contract period, when—Limitation. In those cases where the purchases, as authorized by RCW 79.01.770 and 79.01.774, have been made on a ten year contract, the board of natural resources, if it

deems it in the best interest of the state, may extend the term of any such contract to not to exceed an additional ten years under such terms and conditions as the board may determine. [1971 ex.s. c 200 § 4.]

Severability—1971 ex.s. c 200: See note following RCW 79.01.096.

79.01.780 Determination if lands purchased or leased by school districts or institutions of higher education are used as school sites—Reversion, when. Notwithstanding any other provisions of law, annually the board of natural resources shall determine if lands purchased or leased by school districts or institutions of higher education under the provisions of RCW 79.01.096 and 79.01.770 are being used for school sites. If such land has not been used for school sites for a period of seven years the title to such land shall revert to the original trust for which it was held. [1971 ex.s. c 200 § 5.]

Severability—1971 ex.s. c 200: See note following RCW 79.01.096.

79.01.900 Construction—1927 c 255. This chapter shall not be construed to affect any vested right of any person, firm or corporation, acquired under existing laws, in any public lands of the state, or any preference right to purchase or lease the same, or any findings, rulings or decisions of the commissioner of public lands, or the board of state land commissioners, under existing laws, or any cases now pending before the board of state land commissioners, or the commissioner of public lands, or in any court, but the same shall be continued and determined in the manner provided in existing laws and in this chapter. [1927 c 255 § 201; RRS § 7797-201.]

**Chapter 79.08
GENERAL PROVISIONS**

Sections

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- 79.08.090 Exchange of lands to secure city parks and playgrounds.
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- 79.08.170 Transfer of county auditor's duties to county treasurer.
- 79.08.180 Exchange of lands to facilitate marketing of forest products, to consolidate and block up state lands or to obtain lands having commercial recreational leasing potential.
- 79.08.190 Exchange of lands to facilitate marketing of forest products or to consolidate and block up state lands—Lands acquired—How held and administered.
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- 79.08.210 Transfer of state forest lands back to counties for park use—Procedure—Timber resource management.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see reviser's note following Title 79 RCW digest.

Land use data bank—Contents, source—Consultants authorized—Use: RCW 79.68.120.

Multiple use concept in management and administration of state-owned lands: Chapter 79.68 RCW.

University of Washington, lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands: RCW 28B.20.328.

Washington State University, lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands: RCW 28B.30.325.

79.08.070 University demonstration forest and experiment station. For the purpose of securing an area suitable for a demonstration forest and forest experiment station for the University of Washington authority is hereby granted the board of regents of the University of Washington and the commissioner of public lands with the advice and approval of the state board of land commissioners, all acting with the advice and approval of the attorney general, to exchange all or any portion of the granted lands of the University of Washington assigned for the support of said university by section 9 of chapter 122 of the act of March 14th, 1893, enacted by the legislature of Washington, being entitled, "An act providing for the location, construction and maintenance of the University of Washington, and making an appropriation therefor, and declaring an emergency," for all or any portion of such lands as may be acquired by the state under and by virtue of chapter 102, of the Session Laws of Washington for the year 1913, being: "An act relating to lands granted to the state for common schools and for educational, penal, reformatory, charitable, capitol buildings and other purposes providing for the completion of such grants and the relinquishment of certain granted lands; and making an appropriation," approved March 18th, 1913, by exchange with the United States in the Pilchuck-Sultan-Wallace watersheds included within the present boundaries of the Snoqualmie national forest. Said board of regents and commissioner of public lands with the advice and approval aforesaid are hereby authorized to

execute such agreements, writings or relinquishments as are necessary or proper for the purpose of carrying said exchange into effect and such agreements or other writings to be executed in duplicate, one to be filed with the commissioner of public lands and one to be delivered to the said board of regents. Said exchange shall be made upon the basis of equal values to be determined by careful valuation of the areas to be exchanged. [1917 c 66 § 1; RRS § 7848.]

Reviser's note: 1893 c 122 § 9 referred to herein reads as follows: "That 100,000 acres of the lands granted by section 17 of the enabling act, approved February 22, 1889, for state, charitable, educational, penal and reformatory institutions are hereby assigned for the support of the University of Washington."

79.08.080 Grant of lands for city park or playground purposes. Whenever application is made to the commissioner of public lands by any incorporated city or town or metropolitan park district for the use of any state owned tide or shore lands within the corporate limits of said city or town or metropolitan park district for municipal park and/or playground purposes, he shall cause such application to be entered in the records of his office, and shall then forward the same to the governor, who shall appoint a committee of five representative citizens of said city or town, in addition to the commissioner of public lands and the director of conservation and development, both of whom shall be ex officio members of said committee, to investigate said lands and determine whether they are suitable and needed for such purposes; and, if they so find, the land commissioner shall certify to the governor that the property shall be deeded to the said city or town or metropolitan park district and the governor shall then execute a deed in the name of the state of Washington, attested by the secretary of state, conveying the use of such lands to said city or town or metropolitan park district for said purposes for so long as it shall continue to hold, use and maintain said lands for such purposes. [1939 c 157 § 1; RRS § 7993-1.]

Names of director and department of conservation and development amended: RCW 43.17.010, 43.17.020.

79.08.090 Exchange of lands to secure city parks and playgrounds. In the event there are no state owned tide or shore lands in any such city or town or metropolitan park district suitable for such purposes and the committee finds other lands therein which are suitable and needed therefor, the commissioner of public lands is hereby authorized to secure the same by exchanging state owned tide or shore lands in the same county of equal value therefor, and the use of the lands so secured shall be conveyed to any such city or town or metropolitan park district as provided for in RCW 79.08.080. In all such exchanges the commissioner of public lands shall be and he is hereby authorized and directed, with the assistance of the attorney general, to execute such agreements, writings, relinquishments and deeds as are necessary or proper for the purpose of carrying such exchanges into effect. Upland owners shall be notified of such state owned tide or shore lands to be exchanged. [1939 c 157 § 2; RRS § 7993-2.]

79.08.100 Director of conservation to assist city parks. The director of conservation and development, in addition to serving as an ex officio member of any such committee, is hereby authorized and directed to assist any such city or town or metropolitan park district in the development and decoration of any lands so conveyed and to furnish trees, grass, flowers and shrubs therefor. [1939 c 157 § 3; RRS § 7993-3.]

Names of director and department of conservation and development amended: RCW 43.17.010, 43.17.020.

79.08.102 Use of public lands for state or city park purposes—Regents' consent, when. The department of natural resources is hereby authorized to withdraw from sale or lease, and reserve for state or city park purposes, public lands selected by the state parks and recreation commission, for such time as it shall determine will be for the best interests of the state and any particular fund for which said public lands are being held in trust: *Provided*, None of the lands selected under the provisions of section 3, chapter 91, Laws of 1903, shall be withdrawn or reserved hereunder without the consent of the board of regents of the University of Washington; except that the consent of the board of regents of the University of Washington shall not be required with regard to any such lands which are situated within the corporate limits of any city or town and are presently zoned for residential use. [1969 ex.s. c 129 § 2; 1951 c 26 § 1.]

Reviser's note: 1903 c 91 § 3 referred to herein is not codified. See Appendix: Subject Index—Public Land Acts of Special or Historical Nature—Not codified in RCW; following Title 79 RCW.

Highway commission may construct and maintain roads, bridges within state parks: RCW 47.01.180.

State parks and recreation commission: Chapter 43.51 RCW.

79.08.104 Use of public lands for state or city park purposes—Rental—Deposit of rent. The land commissioner and the state parks and recreation commission shall fix a yearly reasonable rental for the use of public lands reserved for state park purposes, which shall be paid by the commission to the land commissioner for the particular fund for which the lands had been held in trust, and which rent shall be transmitted to the state treasurer for deposit in such fund. [1951 c 26 § 2.]

State parks and recreation commission: Chapter 43.51 RCW.

79.08.106 Use of public lands for state or city park purposes—Removal of timber—Consent—Compensation. No merchantable timber shall be cut or removed from lands reserved for state park purposes without the consent of the land commissioner and without payment to the particular fund for which the lands are held in trust, the reasonable value thereof as fixed by the commissioner. [1951 c 26 § 3.]

79.08.1062 State lands used for state parks—Trust lands, payment of full market value rental—Other lands, rent free. The parks and recreation commission shall pay to the department of natural resources the full market value rental for state-owned lands acquired in

trust from the United States that are used for state parks. All other state lands used by the parks and recreation commission for state parks shall be rent free. [1967 ex.s. c 63 § 4.]

79.08.1064 State lands used for state parks—Trust lands—Determination of full market value by board of natural resources. The full market value shall be determined by the board of natural resources for trust lands used for state park purposes. [1969 ex.s. c 189 § 1; 1967 ex.s. c 63 § 5.]

79.08.1066 State lands used for state parks—Trust lands—Full market value rental defined—Factor in determination. The full market value rental for trust lands used by the parks and recreation commission shall be a percentage of the full market value of the land and the board of natural resources shall consider in its deliberations the average percentage of return realized by the state during the preceding fiscal biennium on the invested common school permanent fund. [1969 ex.s. c 189 § 2; 1967 ex.s. c 63 § 6.]

79.08.1069 State lands used for state parks—Certain funds appropriated for rental to be deposited without deduction for management purposes. Any funds appropriated to the state parks and recreation commission for payment of rental for use of state lands reserved for state park purposes during the 1969–71 biennium and received by the department of natural resources shall be deposited by the department to the applicable trust land accounts without the deduction normally applied to such revenues for management purposes. [1969 ex.s. c 189 § 3.]

79.08.1072 Utilization of public lands for outdoor recreational purposes—State agency cooperation. In order to maximize outdoor recreation opportunities for the people of the state of Washington and allow for the full utilization of state owned land, all state departments and agencies are authorized and directed to cooperate together in fully utilizing the public lands. All state departments and agencies, vested with statutory authority for utilizing land for outdoor recreation or other beneficial public uses, are authorized and directed to apply to another state department or agency holding suitable public lands for permission of use. The department or agency applied to is authorized and directed to grant permission of use to the applying department or agency if the public use of the public land would be consistent with the existing and continuing principal uses. Trust lands may be withdrawn for outdoor recreation purposes from sale or lease for other purposes by the department of natural resources pursuant to this section subject to the constraints imposed by the Washington state Constitution and the federal enabling statute. The decision regarding such consistency with existing and continuing principal uses shall be made by the agency owning or controlling such lands and which decision shall be final. [1969 ex.s. c 247 § 1.]

79.08.1074 Department estopped from certain actions respecting state parks without concurrence of commission. The department of natural resources shall not rescind the withdrawal of public land in any existing and future state park nor sell any timber or other valuable material therefrom or grant any right of way or easement thereon, except as provided in the withdrawal order or for off-site drilling, without the concurrence of the state parks and recreation commission.

The department of natural resources shall have reasonable access across such lands in order to reach other public lands administered by the department of natural resources. [1969 ex.s. c 247 § 2.]

Department of natural resources: Chapter 43.30 RCW.

Parks and recreation commission: Chapter 43.51 RCW.

State trust lands—Withdrawal—Revocation or modification of withdrawal when used for recreational purposes—Board to determine most beneficial use in accordance with agency policy: RCW 79.08.1078.

79.08.1078 State trust lands—Withdrawal—Revocation or modification of withdrawal when used for recreational purposes—Hearing—Notice—Board to determine most beneficial use in accordance with agency policy. (1) A public hearing may be held prior to any withdrawal of state trust lands and shall be held prior to any revocation of withdrawal or modification of withdrawal of state trust lands used for recreational purposes by the department of natural resources or by other state agencies.

(2) The department shall cause notice of the withdrawal, revocation of withdrawal or modification of withdrawal of state trust lands as described in subsection (1) of this section to be published by advertisement once a week for four weeks prior to the public hearing in at least one newspaper published and of general circulation in the county or counties in which the state trust lands are situated, and by causing a copy of said notice to be posted in a conspicuous place in the department's Olympia office, in the district office in which the land is situated, and in the office of the county auditor in the county where the land is situated thirty days prior to the public hearing. The notice shall specify the time and place of the public hearing and shall describe with particularity each parcel of state trust lands involved in said hearing.

(3) The board of natural resources shall administer the hearing according to its prescribed rules and regulations.

(4) The board of natural resources shall determine the most beneficial use or combination of uses of the state trust lands. Its decision will be conclusive as to the matter: *Provided, however,* That said decisions as to uses shall conform to applicable state plans and policy guidelines adopted by the planning and community affairs agency. [1969 ex.s. c 129 § 1.]

Department estopped from certain actions respecting state parks without concurrence of commission: RCW 79.08.1074.

Purchase of withdrawn state trust lands by state parks and recreation commission: RCW 43.51.270, 43.51.280.

Reconveyance of state forest land to counties for park purposes: RCW 76.12.072–76.12.075.

79.08.108 Exchange of lands to secure state park lands. For the purpose of securing and preserving certain lands for state park purposes, the commissioner of public lands shall, with the advice and approval of the board of state land commissioners, exchange any state lands of equal value for any lands, located in the following described tracts, which may be selected and requested by the state parks and recreation commission for state park purposes: Government lots 1, 2, 3, and 4 of section 20, all of section 21, government lot 1 of section 22, government lot 1 of section 29, the north half of the north half of section 28, and government lot 1 of section 27, all in township 13 north, range 11 west, W.M. in Pacific county; the northeast quarter of the southwest quarter and the south half of the southwest quarter of section 24, township 2 north, range 6 east, W.M., in Skamania county; and the southeast quarter of section 15, the south half of the northwest quarter and the southwest quarter of section 14, the southwest quarter of section 11, the west half and the northeast quarter of the northeast quarter of section 22, the northwest quarter of section 26, and the northeast quarter of section 27, all in township 28 north, range 45 east, W.M. in Spokane county; the southwest quarter and the west half of the southeast quarter of section 16, the east half of the east half of section 20, the northeast quarter of the northeast quarter of section 29, the northwest quarter, the west half of the southwest quarter and government lots 1, 2, 3, 4 and 5 of section 21, including tidelands and government lots 1 and 2 of section 28, including tidelands, all in township 25 north, range 2 west, W.M. in Jefferson county. The commissioner shall, with the advice and approval of the attorney general, execute such agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to effect such exchanges. When such exchanges have been effected, the lands so acquired in exchange shall be reserved by the commissioner of public lands for state park purposes in accordance with RCW 79.08.102, 79.08.104 and 79.08.106. [1953 c 96 § 1.]

Certification of deed to governor: RCW 79.01.220.

79.08.109 Exchange of lands to secure private lands for parks and recreation purposes. For the purpose of securing and preserving privately owned lands for parks and recreation purposes, the department of natural resources is authorized, with the advice and approval of the state board of natural resources, to exchange any state lands of equal value for such lands. Lands acquired by exchange as herein provided shall be withdrawn from lease and sale and reserved for park and recreation purposes. [1967 ex.s. c 64 § 2.]

~~Construction~~ ~~Severability~~—1967 ex.s. c 64: See notes following RCW 43.30.300.

Outdoor recreation facilities, construction and maintenance by department of natural resources: RCW 43.30.300.

79.08.110 Relinquishment to United States, in certain cases of reserved mineral rights. Whenever the state shall have heretofore sold or may hereafter sell any

state lands and issued a contract of purchase or executed a deed of conveyance therefor, in which there is a reservation of all oils, gases, coal, ores, minerals and fossils of every kind and of rights in connection therewith, and the United States of America shall have acquired for governmental purposes and uses all right, title, claim and interest of the purchaser, or grantee, or his successors in interest or assigns, in or to said contract or the land described therein, except such reserved rights, and no oils, gases, coal, ores, minerals or fossils of any kind have been discovered or are known to exist in or upon such lands, the commissioner of public lands may, if he deems advisable, cause to be prepared a deed of conveyance to the United States of America of such reserved rights, and certify the same to the governor in the manner provided by law for deeds to state lands, and the governor shall be, and hereby is authorized to execute, and the secretary of state to attest, a deed of conveyance for such reserved rights to the United States of America. [1931 c 105 § 1; RRS § 8124-1.]

Certification of deed to governor: RCW 79.01.220.

79.08.120 Leases to United States for national defense. State lands may be leased to the United States for national defense purposes at the fair rental value thereof as determined by the commissioner of public lands, for a period of five years or less. Such leases may be made without competitive bidding at public auction and without payment in advance by the United States government of the first year's rental. Such leases otherwise shall be negotiated and arranged in the same manner as other leases of state lands. [1941 c 66 § 1; Rem. Supp. 1941 § 8122-1.]

79.08.140 Prospecting leases and contracts on state lands. See RCW 79.01.616 through 79.01.648.

79.08.150 Option contracts and coal leases on state lands. See RCW 79.01.652 through 79.01.696.

79.08.160 Oil and gas leases on state lands. See chapter 79.14 RCW.

79.08.170 Transfer of county auditor's duties to county treasurer. The duties of the county auditor in class AA and class A counties with regard to sales and leases of the state lands dealt with under Title 79 RCW except RCW 79.01.100, 79.01.104, 79.01.436, 79.16.460, and 79.48.170 are transferred to the county treasurer. [1955 c 184 § 1.]

✓ **79.08.180 Exchange of lands to facilitate marketing of forest products, to consolidate and block up state lands or to obtain lands having commercial recreational leasing potential.** For the purpose of facilitating the marketing of forest products of state lands, or consolidating and blocking up of state lands, or the acquisition of lands having commercial recreational leasing potential, the commissioner of public lands may, with the advice and approval of such state board, commission, committee, or agency exercising control over the disposal of the land involved, exchange any lands with any timber

thereon for any other land of equal value, including other state lands, lands of the United States, county or municipal lands of any character, and privately owned lands. [1973 1st ex.s. c 50 § 2; 1961 c 77 § 4; 1957 c 290 § 1.]

Exchange to block up holdings: RCW 76.12.050, 76.12.060.

79.08.190 Exchange of lands to facilitate marketing of forest products or to consolidate and block up state lands—Lands acquired—How held and administered. Lands acquired by the state of Washington as the result of any exchange authorized by RCW 79.08.180 through 79.08.200, shall be held and administered for the benefit of the same fund and subject to the same laws as were the lands exchanged therefor. [1957 c 290 § 2.]

79.08.200 Exchange of lands to facilitate marketing of forest products or to consolidate and block up state lands—Agreements, deeds, etc. The commissioner of public lands shall, with the advice and approval of the attorney general, execute such agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to execute such exchange authorized by RCW 79.08.180 through 79.08.200. [1957 c 290 § 3.]

79.08.210 Transfer of state forest lands back to counties for park use—Procedure—Timber resource management. See RCW 76.12.072–76.12.075.

Chapter 79.12

SALES AND LEASES OF PUBLIC LANDS AND MATERIALS

Sections

LEASING ON SHARE CROP BASIS

- 79.12.570 Share crop leases authorized—Terms—Application.
- 79.12.580 Notice of leasing—Publication—Contents.
- 79.12.590 Lease to highest bidder—List of lands—Posting.
- 79.12.600 Harvest, storage of crop—Notice—Warehouse receipts.
- 79.12.610 Sale, storage, or other disposition of crop.
- 79.12.620 Insurance of crop—Division of cost.
- 79.12.630 Application of other provisions to share crop leases.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see reviser's note following Title 79 RCW digest.

LEASING ON SHARE CROP BASIS

79.12.570 Share crop leases authorized—Terms—Application. The commissioner of public lands may lease agricultural school and granted lands on a share crop basis. Share crop leases shall be on such terms and conditions and for such length of time, not to exceed ten years, as the commissioner may prescribe. Upon receipt of a written application to lease agricultural school and granted lands, the commissioner shall make such investigations as he shall deem necessary and if he finds that such a lease would be advantageous to the state, he may proceed with the leasing of such

land on said basis. [1961 c 73 § 10; 1949 c 203 § 1; Rem. Supp. 1949 § 7895–1.]

79.12.580 Notice of leasing—Publication—Contents. If the commissioner of public lands determines to make a lease of agricultural school and granted lands on a share crop basis, he shall fix the terms thereof and publish a notice of leasing in a newspaper of general circulation in the county in which such lands are situated. Such notice shall be advertised for a period of two consecutive weeks and shall contain the legal description of the lands for which application to lease has been made, shall set forth the terms of the lease and fix the time and place at which the leasing shall be held. [1949 c 203 § 2; Rem. Supp. 1949 § 7895–2.]

79.12.590 Lease to highest bidder—List of lands—Posting. The commissioner of public lands shall certify to the county auditor of the county in which the land is located a list of the lands to be leased. Upon receipt of any certified list of lands to be offered for leasing under the provisions of RCW 79.12.570 through 79.12.630, the county auditor shall post said list for a period of thirty days prior to the date of leasing in some conspicuous place in his office and elsewhere in the county as the commissioner of public lands may direct, and on the day and at the place fixed by the commissioner, shall offer the lands described in the list for lease to the highest bidder. [1949 c 203 § 3; Rem. Supp. 1949 § 7895–3.]

Sales and leases of state lands, duties of county auditor in class AA and class A counties transferred to county treasurer: RCW 79.08.170.

79.12.600 Harvest, storage of crop—Notice—Warehouse receipts. When wheat, barley, rye, corn, other grain or peas are harvested, the lessee shall give written notice to the commissioner that the crop is being harvested, and shall also give to the commissioner the name and address of the warehouse or elevator to which such grain or peas are sold or in which such grain or peas will be stored. The lessee shall also serve on the owner of such warehouse or elevator a written copy of so much of the lease as shall show the percentage of division of the proceeds of such crop as between lessee and lessor. The owner of such warehouse or elevator shall make out two warehouse receipts, one receipt showing the percentage of grain or peas belonging to the state and the other showing the percentage of grain or peas belonging to the lessee, and the respective amounts thereof, and shall deliver to the commissioner the receipt for the state's percentage of such grain or peas within ten days after he has received such instructions. [1949 c 203 § 4; Rem. Supp. 1949 § 7895–4.]

79.12.610 Sale, storage, or other disposition of crop. The commissioner shall sell the grain or peas covered by the warehouse receipt within sixty days after receiving such receipt, or may comply with the provisions of any federal act or the regulation of any federal agency with relation to the storage or disposition of said grain or peas. [1949 c 203 § 5; Rem. Supp. 1949 § 7895–5.]

79.12.620 Insurance of crop—Division of cost. The lessee under any lease issued under the provisions of RCW 79.12.570 through 79.12.630 shall notify the commissioner of public lands as soon as an estimated yield of the crop can be obtained, such estimate to be immediately submitted to the commissioner, who is hereby authorized to insure the crop from loss by fire or hail. The cost of such insurance shall be paid by the state and lessee on the same basis as the crop returns to which each is entitled. [1949 c 203 § 6; Rem. Supp. 1949 § 7895-6.]

79.12.630 Application of other provisions to share crop leases. RCW 79.12.570 through 79.12.630 shall not repeal the provisions of the general leasing statutes of the state of Washington and all of the general provisions of such statutes with reference to filing of applications, deposits required therewith, forfeiture of deposits, cancellation of leases for noncompliance and general procedures shall apply to all leases issued under the provisions of RCW 79.12.570 through 79.12.630. [1949 c 203 § 7; Rem. Supp. 1949 § 7895-7.]

Chapter 79.14

OIL AND GAS LEASES ON STATE LANDS

Sections

79.14.010	Definitions.
79.14.020	Leases authorized—Terms—Duration.
79.14.030	Rental fees—Minimum royalties.
79.14.040	Compensation to owners of private rights and to state for surface damage.
79.14.050	Drilling operations beyond lease term—Lease provisions.
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79.14.100	Cooperative or unit plans—Communization or drilling agreements.
79.14.110	Customary provisions in leases.
79.14.120	Rules and regulations.
79.14.130	Wells to be located minimum distance from boundaries—Exception.
79.14.140	Rights of way over public lands—Payment for timber.
79.14.150	Sales of timber—Rules.
79.14.160	Development after discovery.
79.14.170	Spacing and offsetting of wells.
79.14.180	Lands may be withheld from leasing.
79.14.190	Payment of royalty share—Royalty in kind.
79.14.200	Prior permits validated—Relinquishment for new leases.
79.14.210	Assignments and subleases of leases.
79.14.220	Appeal from rulings of commissioner.
79.14.900	Severability—1955 c 131.

Reviser's note: The powers and duties of the commissioner of public lands mentioned in this chapter have devolved upon department of natural resources, see reviser's note following Title 79 RCW digest.

Franchises on county roads and bridges: Chapter 36.55 RCW.

Gas and oil pipe lines: Chapter 81.88 RCW.

Interstate oil compact commission, governor may join: RCW 43.06.015.

Oil and gas conservation: Chapter 78.52 RCW.

79.14.010 Definitions. Whenever used in this chapter, unless the context otherwise requires, words and terms shall have the meaning attributed to them herein:

(1) "Public lands": Lands and areas belonging to or held in trust by the state, including tide and submerged lands of the Pacific Ocean or any arm thereof and lands of every kind and nature including mineral rights reserved to the state.

(2) "Commissioner": The commissioner of public lands of the state of Washington. [1967 c 163 § 6; 1955 c 131 § 1. Prior: 1937 c 161 § 1. Formerly RCW 78.28.280.]

1967 act adopted to implement Amendment 42—Severability—1967 c 163: See notes following RCW 64.16.005.

79.14.020 Leases authorized—Terms—Duration.

The commissioner is authorized to lease public lands for the purpose of prospecting for, developing and producing oil, gas or other hydrocarbon substances. Each such lease is to be composed of not more than six hundred forty acres, except a lease on river bed, lake bed, tide and submerged lands which is to be composed of not more than one thousand nine hundred twenty acres. All leases shall contain such terms and conditions as may be prescribed by the rules and regulations adopted by the commissioner in accordance with the provisions of this chapter. All leases shall be for terms of five years and for so long thereafter as lessee shall produce any of said substances from the leased lands, and shall comply with the provisions hereof, or shall be engaged in drilling, deepening, repairing, or re-drilling any well thereon, or be thereafter excused therefrom but not to exceed a period of twenty years. The lessee shall have preferential right to a new lease covering such lands for an additional twenty-year period on the same terms and conditions as set forth in such previous lease. [1955 c 131 § 2. Prior: 1937 c 161 §§ 2, 3; 1927 c 255 §§ 175, 176. Formerly RCW 78.28.290.]

79.14.030 Rental fees—Minimum royalties. The commissioner shall require as a prerequisite to the issuing of any lease a rental of fifty cents per acre for the first year of such lease, payable in advance to the commissioner at the time of making application therefor and a like rental of fifty cents per acre annually in advance thereafter so long as such lease remains in force: *Provided*, That in the event no lease be issued or the lease when issued includes less acreage than that applied for, such rental shall be returned to the applicant insofar as it pertains to lands not included in such lease. Such rental shall cease at such time as royalty accrues to the state from production from such lease. Commencing with the lease year beginning on or after oil, gas or other hydrocarbon substances are first produced in quantities deemed paying quantities by lessee on the land subject to such lease, lessee shall pay a minimum royalty of five dollars per acre or fraction thereof at the expiration of each year, or the difference between the actual royalty paid during the year if less than five dollars per acre and the prescribed minimum royalty of five dollars per acre: *Provided*, That if such lease is unitized, the minimum royalty shall be payable only on the leased acreage after production is obtained in such

paying quantities from such lease. [1955 c 131 § 3. Prior: 1937 c 161 § 4; 1927 c 255 § 176. Formerly RCW 78.28.300.]

79.14.040 Compensation to owners of private rights and to state for surface damage. No lessee shall commence any operation upon lands covered by his lease until such lessee has provided for compensation to owners of private rights therein according to law, or in lieu thereof, filed a surety bond with the commissioner in an amount sufficient in the opinion of the commissioner to cover such compensation until the amount of compensation is determined by agreement, arbitration or judicial decision and has provided for compensation to the state of Washington for damage to the surface rights of the state in accordance with the rules and regulations adopted by the commissioner. [1955 c 131 § 4. Prior: 1937 c 161 § 6; 1927 c 255 § 175. Formerly RCW 78.28.310.]

79.14.050 Drilling operations beyond lease term—Lease provisions. All leases shall provide that if oil, gas or other hydrocarbon substances are not encountered on or before the end of the initial five-year term, the lease shall not terminate if the lessee is then prosecuting drilling operations on the leased lands with due diligence, in which event the same shall remain in force so long as lessee shall keep one string of tools in operation on the leased lands, allowing not to exceed ninety days between the completion of one well and the commencement of the next until such substances are encountered in quantities deemed paying quantities by lessee. All leases shall further provide that if oil, gas or other hydrocarbon substances in paying quantities shall have been discovered on the leased lands prior to the expiration of the initial five-year term, then in the event at any time after the expiration of the initial five-year term production on the leased land shall cease from any cause, the lease shall not terminate provided lessee resumes operations for the drilling of a well or the restoration of production within ninety days from such cessation. The lease shall remain in force during the prosecution of such operations, and if production results therefrom, then so long as production continues. [1955 c 131 § 5. Prior: 1937 c 161 § 7; 1927 c 255 § 180. Formerly RCW 78.28.320.]

79.14.060 Surrender of lease—Liability. Every lessee shall have the option of surrendering his lease as to all or any portion or portions of the land covered thereby at any time and shall be relieved of all liability thereunder with respect to the land so surrendered except for monetary payments theretofore accrued and except for physical damage to the premises embraced by his lease which have been occasioned by his operations. [1955 c 131 § 6. Prior: 1937 c 161 §§ 8, 10. Formerly RCW 78.28.330.]

79.14.070 Royalties. All oil and gas leases issued pursuant to this chapter shall be upon a royalty of not less than twelve and one-half percent of the gross production of all oil, gas or other hydrocarbons produced

and saved from the lands covered by such lease. [1955 c 131 § 7. Prior: 1937 c 161 § 9; 1927 c 255 § 176. Formerly RCW 78.28.340.]

79.14.080 Leases of land within a geologic structure. Oil and gas leases shall not be issued on unleased lands which have been classified by the commissioner as being within a known geologic structure of a producing oil or gas field, except as follows: Upon application of any person, the commissioner shall lease in areas not exceeding six hundred forty acres, at public auction, any or all unleased lands within such geologic structure to the person offering the greatest cash bonus therefor at such auction. Notice of the offer of such lands for lease will be given by publication in a newspaper of general circulation in Olympia, Washington, and in such other publications as the commissioner may authorize. The first publication shall be at least thirty days prior to the date of sale. [1955 c 131 § 8. Prior: 1937 c 161 §§ 5, 11. Formerly RCW 78.28.350.]

79.14.090 Cancellation or forfeiture of leases—New leases. The commissioner is hereby authorized to cancel any lease issued as provided herein for nonpayment of rentals or royalties or nonperformance by the lessee of any provision or requirement of the lease: *Provided*, That before any such cancellation shall be made, the commissioner shall mail to the lessee by registered mail, addressed to the post office address of such lessee shown by the records of the office of the commissioner, a notice of intention to cancel such lease specifying the default for which the lease is subject to cancellation. If lessee shall, within thirty days after the mailing of said notice to the lessee, commence and thereafter diligently and in good faith prosecute the remedying of the default specified in such notice, then no cancellation of the lease shall be entered by the commissioner. Otherwise, the said cancellation shall be made and all rights of the lessee under the lease shall automatically terminate, except that lessee shall retain the right to continue its possession and operation of any well or wells in regard to which lessee is not in default: *Provided further*, That failure to pay rental and royalty required under leases within the time prescribed therein shall automatically and without notice work a forfeiture of such leases and of all rights thereunder. Upon the expiration, forfeiture, or surrender of any lease, no new lease covering the lands or any of them embraced by such expired, forfeited, or surrendered lease, shall be issued for a period of ten days following the date of such expiration, forfeiture, or surrender. If more than one application for a lease covering such lands or any of them shall be made during such ten-day period the commissioner shall issue a lease to such lands or any of them to the person offering the greatest cash bonus for such lease at a public auction to be held at the time and place and in the manner as the commissioner shall by regulation prescribe. [1955 c 131 § 9. Prior: 1937 c 161 § 12; 1927 c 255 § 179. Formerly RCW 78.28.360.]

79.14.100 Cooperative or unit plans—Communization or drilling agreements. For the purpose of more properly conserving the natural resources of any oil or gas pool, field, or like area, lessees thereon and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative [or] unit plan of development or operation of such pool, field, or like area, or any part thereof, whenever determined and certified by commissioner to be necessary or advisable in the public interest. The commissioner is thereunto authorized, in his discretion, with the consent of the holders of leases involved, in order to conform with the terms and conditions of any such cooperative or unit plan to establish, alter, change or revoke exploration, drilling, producing, rental, and royalty requirements of such leases with like consent on the part of the lessees, in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure the proper protection of the public interest.

When separate tracts cannot be independently developed and operated in conformity with an established well spacing or development program, any lease or any portion thereof may be pooled with other lands, whether or not owned by the state of Washington under a communization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the commissioner to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each such lease committed thereto.

The term of any lease that has become the subject of any cooperative or unit plan of development or operation of a pool, field, or like area, which plan has the approval of the commissioner, shall continue in force until the termination of such plan, and in the event such plan is terminated prior to the expiration of any such lease, the original term of such lease shall continue. Any lease under this chapter hereinafter committed to any such plan embracing lands that are in part within and in part outside of the area covered by any such plan, shall be segregated in separate leases as to the lands committed and the land not committed as of the effective date of unitization. [1955 c 131 § 10. Prior: 1937 c 161 § 14. Formerly RCW 78.28.370.]

79.14.110 Customary provisions in leases. The commissioner is authorized to insert in any lease issued under the provisions of this chapter such terms as are customary and proper for the protection of the rights of the state and of the lessee and of the owners of the surface of the leased lands not in conflict with the provisions of this chapter. [1955 c 131 § 11. Prior: 1937 c 161 § 15; 1927 c 255 § 178. Formerly RCW 78.28.380.]

79.14.120 Rules and regulations. The commissioner is required to prescribe and publish, for the information of the public, all reasonable rules and regulations necessary for carrying out the provisions of this chapter.

He may amend or rescind any rule or regulation promulgated by him under the authority contained herein: *Provided*, That no rule or regulation or amendment of the same or any order rescinding any rule or regulation shall become effective until after thirty days from the promulgation of the same by publication in a newspaper of general circulation published at the state capitol and shall take effect and be in force at times specified therein. All rules and regulations of the commissioner and all amendments or revocations of existing rules and regulations shall be recorded in an appropriate book or books, shall be adequately indexed, and shall be kept in the office of the commissioner and shall constitute a public record. Such rules and regulations of the commissioner shall be printed in pamphlet form and furnished to the public free of cost. [1955 c 131 § 12. Prior: 1937 c 161 § 16; 1927 c 255 § 178. Formerly RCW 78.28.390.]

79.14.130 Wells to be located minimum distance from boundaries—Exception. Each lease issued under this chapter shall provide that without the approval of the commissioner, no well shall be drilled on the lands demised thereby in such manner or at such location that the producing interval thereof shall be less than three hundred thirty feet from any of the outer boundaries of the demised lands, except that if the right to oil, gas or other hydrocarbons underlying adjoining lands be vested in private ownership, such approval shall not be required. [1955 c 131 § 13. Prior: 1937 c 161 § 17. Formerly RCW 78.28.400.]

79.14.140 Rights of way over public lands—Payment for timber. Any person granted a lease under the provisions of this chapter shall have a right of way over public lands, as provided by law, when necessary, for the drilling, recovering, saving and marketing of oil, gas or other hydrocarbons. Before any such right of way grant shall become effective, a written application for, and a plat showing the location of, such right of way, and the land necessary for the well site and drilling operations, with reference to adjoining lands, shall be filed with the commissioner. All timber on said right of way and the land necessary for the drilling operation, shall be appraised by the commissioner and paid for in money by the person to whom the lease is granted. [1955 c 131 § 14. Prior: 1937 c 161 § 18. Formerly RCW 78.28.410.]

79.14.150 Sales of timber—Rules. All sales of timber, as prescribed in this chapter, shall be made subject to the right, power and authority of the commissioner to prescribe rules and regulations governing the manner of the removal of the merchantable timber upon any lands embraced within any lease with the view of protecting the same and other timber against destruction or injury by fire or from other causes. Such rules or regulations shall be binding upon the lessee, his successors in interest, and shall be enforced by the commissioner. [1955 c 131 § 15. Prior: 1937 c 161 § 19. Formerly RCW 78.28.420.]

79.14.160 Development after discovery. After the discovery of oil, gas or other hydrocarbons in paying quantities, lessee shall proceed to develop the oil, gas or other hydrocarbons in the lands covered thereby through the drilling of such wells as will efficiently extract the oil, gas or other hydrocarbons therefrom and such development shall take into account the productivity of the producing horizon, the depth at which it occurs, the average cost of wells, the market requirements obtaining at any given time, and the maintenance of proper oil and gas ratios. [1955 c 131 § 16. Prior: 1937 c 161 § 20. Formerly RCW 78.28.430.]

79.14.170 Spacing and offsetting of wells. All leases shall contain such terms, conditions, and provisions as will protect the interests of the state with reference to spacing of wells for the purpose of offsetting any wells on privately owned lands. [1955 c 131 § 17. Prior: 1937 c 161 § 21. Formerly RCW 78.28.440.]

79.14.180 Lands may be withheld from leasing. Nothing contained in this chapter shall be construed as requiring the commissioner to offer any tract or tracts of land for lease; but the commissioner shall have power to withhold any tract or tracts from leasing for oil, gas or other hydrocarbons, if, in his judgment, the best interest of the state will be served by so doing. [1955 c 131 § 18. Prior: 1937 c 161 § 24. Formerly RCW 78.28.450.]

79.14.190 Payment of royalty share—Royalty in kind. The lessee shall pay to the commissioner the market value at the well of the state's royalty share of oil and other hydrocarbons except gas produced and saved and delivered by lessee from the lease. In lieu of receiving payment for the market value of the state's royalty share of oil, the commissioner may elect that such royalty share of oil be delivered in kind at the mouth of the wells into tanks provided by the commissioner. Lessee shall pay to the commissioner the state's royalty share of the sale price received by the lessee for gas produced and saved and sold from the lease. If such gas is not sold but is used by lessee for the manufacture of gasoline or other products, lessee shall pay to the commissioner the market value of the state's royalty share of the residue gas and other products, less a proper allowance for extraction costs. [1955 c 131 § 19. Prior: 1937 c 161 § 25. Formerly RCW 78.28.460.]

79.14.200 Prior permits validated—Relinquishment for new leases. All exploration permits issued by the commissioner prior to the *effective date of this chapter, which have not expired or been legally canceled for nonperformance by the permittees, are hereby declared to be valid and existing contracts with the state of Washington, according to their terms and provisions. The obligation of the state to conform to the terms and provisions of such permits is hereby recognized, and the commissioner is directed to accept and recognize all such permits according to their express terms and provisions. No repeal or amendment made by this chapter

shall affect any right acquired under the law as it existed prior to such repeal or amendment, and such right shall be governed by the law in effect at time of its acquisition. Any permit recognized and confirmed by this section may be relinquished to the state by the permittee, and a new lease or, if such permit contains more than six hundred forty acres, new leases in the form provided for in this chapter, shall be issued in lieu of same and without bonus therefor; but the new lease or leases so issued shall be as provided for in this chapter and governed by the applicable provisions of this chapter instead of by the law in effect prior thereto. [1955 c 131 § 20. Prior: 1937 c 161 § 26. Formerly RCW 78.28.470.]

***Reviser's note:** Effective date of this chapter was midnight, June 8, 1955; see preface 1955 session laws.

79.14.210 Assignments and subleases of leases. Any oil or gas lease issued under the authority of this chapter may be assigned or subleased as to all or part of the acreage included therein, subject to final approval by the commissioner, and as to either a divided or undivided interest therein to any person. Any assignment or sublease shall take effect as of the first day of the lease month following the date of filing with the commissioner: *Provided, however,* That the commissioner may, in his discretion, disapprove an assignment of a separate zone or deposit under any lease or of a part of a legal subdivision. Upon approval of any assignment or sublease, the assignee or sublessee shall be bound by the terms of the lease to the same extent as if such assignee or sublessee were the original lessee, any conditions in the assignment or sublease to the contrary notwithstanding. Any partial assignment of any lease shall segregate the assigned and retained portions thereof, and upon approval of such assignment by the commissioner, the assignor shall be released and discharged from all obligations thereafter accruing with respect to the assigned lands. [1955 c 131 § 21. Prior: 1937 c 161 § 27. Formerly RCW 78.28.480.]

79.14.220 Appeal from rulings of commissioner. Any applicant for a lease under this chapter, feeling himself aggrieved by any order or decision, rule or regulation of the commissioner of public lands, concerning the same, may appeal therefrom to the superior court of the county wherein such lands are situated, as provided by RCW 79.01.500. [1955 c 131 § 22. Prior: 1937 c 161 § 28. Formerly RCW 78.28.490.]

79.14.900 Severability—1955 c 131. If any provision or section of this chapter shall be adjudicated to be unconstitutional, such adjudication shall not affect the validity of this chapter as a whole or any part thereof not adjudicated unconstitutional. If any provision of this chapter, or the application of such provision to any person or circumstances is held unconstitutional, invalid or unenforceable, the remainder of this chapter or the application of such provision to persons or circumstances other than those as to which it is held unconstitutional, invalid or unenforceable, shall not be

affected thereby. [1955 c 131 § 23. Formerly RCW 78.28.900.]

Chapter 79.16
TIDELANDS, SHORELANDS, AND HARBOR
AREAS

Sections

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Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see reviser's note following Title 79 RCW digest.

Tidelands—Upland owner use: "Section 1. The state department of fisheries is authorized to permit designated portions of the following described tidelands to be used by the upland owners thereof for the purpose of building and maintaining docks: Tidelands of the second class owned by the state of Washington situated in front of, adjacent to, or abutting upon, the entire west side of lot 1, section 5, Township 34 North, Range 2 West, W.M., to the northernmost tip of said lot, and lots 2 and 3, section 8, Township 34 North, Range 2 West, W.M. (Cattle Point)." [1967 ex.s. c 128 § 1.]

Control of traffic along ocean beach highways, powers and duties of state parks and recreation commission: RCW 43.51.680.

Harbor area leaseholds and tideland leases subject to municipal local improvement assessments: RCW 35.44.150, 35.44.160.

Harbor improvement districts: Chapter 88.32 RCW.

Harbors and tide waters: State Constitution Art. 15.

Lease of state-owned harbor areas: Chapter 53.32 RCW.

Municipal bridges and trestles over tide and shore lands and adjacent harbor areas: RCW 79.01.372.

Public shooting grounds: Chapter 77.40 RCW.

Relocation of harbor lines: Chapter 79.01 RCW.

Tidelands ownership by state: State Constitution Art. 17.

Waterways: Title 91 RCW.

Wharves and landings on and across tide or shore lands: Chapter 88.24 RCW.

79.16.130 Queets to Flattery tidelands declared public highway. The tidelands along the shore and beach of the Pacific ocean from the mouth of the Queets river north to Cape Flattery in the state of Washington, excepting, however, such rights as may have been conveyed by the state through deeds covering the second class tidelands in front of section 24, township 31 north, range 16 west, Willamette Meridian, be and the same are hereby declared a public highway forever and as such highway shall remain forever open to the use of the public. [1935 c 54 § 1; RRS § 6402–31.]

Control of traffic on ocean beach highways: RCW 43.51.680.

79.16.140 Queets to Flattery tidelands declared public highway—Reservation from sale or lease. No part of the tidelands along the said shore and beach shall ever be sold or otherwise disposed of, or leased for any purpose other than the extraction of petroleum, gas or minerals. [1959 c 168 § 1; 1935 c 54 § 2; RRS § 6402–32.]

79.16.150 Queets to Flattery tidelands declared public highway—Leases not to be extended. No leases, except those issued for extraction of petroleum, gas or minerals, now existing on or for any part or parts of

said tidelands along said shore and beach shall be renewed or extended. [1959 c 168 § 2; 1935 c 54 § 3; RRS § 6402-33.]

79.16.160 Damon's Point to Queets tidelands declared public highway. The shore and beach of the Pacific ocean including the area or space lying between ordinary high tide and extreme low tide (as such shore and beach now are or hereafter may be) from the southerly point of Damon's Point on the north side of the entrance to Gray's Harbor to the mouth of the Queets river, state of Washington, be and the same are hereby declared a public highway forever, and as such highway shall remain forever open to the use of the public. [1901 c 105 § 1; no RRS. FORMER PART OF SECTION: 1901 c 105 § 2 now codified as RCW 79.16.161.]

Control of traffic on ocean beach highways: RCW 43.51.680.

79.16.161 Damon's Point to Queets tidelands declared public highway—Reservation from sale, lease, etc. No part of said shore or beach shall ever be sold, leased or otherwise disposed of. [1901 c 105 § 2; no RRS. Formerly RCW 79.16.160, part.]

79.16.170 Columbia river to Peterson's Point tidelands declared public highway. The shore and beach of the Pacific Ocean, including the area or space lying, abutting or fronting on said ocean and between ordinary high tide and extreme low tide (as such shore and beach now are or hereafter may be) from the Columbia River or Cape Disappointment on the south to a point three hundred feet southerly from the south line of the government jetty on Peterson's Point, state of Washington on the north, be and the same are hereby declared a public highway forever, and as such highway shall remain forever open to the use of the public. [1901 c 110 § 1; no RRS. FORMER PART OF SECTION: 1901 c 110 § 2 now codified as RCW 79.16.171.]

Control of traffic on ocean beach highways: RCW 43.51.680.

79.16.171 Columbia river to Peterson's Point tidelands declared public highway—Reservation from sale, lease, etc. No part of said shore or beach shall ever be sold, conveyed, leased or otherwise disposed of. [1901 c 110 § 2; no RRS. Formerly RCW 79.16.170, part.]

79.16.172 Highways established by RCW 79.16.130-79.16.171—Portion declared public recreation area—Reservation. That portion of the public highway as established by chapter 54, Laws of 1935, chapter 105, Laws of 1901, and chapter 110, Laws of 1901, lying between the line of vegetation and the line of mean high tide, as such lines now are or may hereafter be, is hereby declared a public recreation area and is hereby set aside and forever reserved for the use of the public. [1963 c 212 § 1.]

Reviser's note: The statutes referred to are codified as follows:

- (1) 1935 c 54 as RCW 79.16.130, 79.16.140 and 79.16.150;
- (2) 1901 c 105 as RCW 79.16.160 and 79.16.161; and
- (3) 1901 c 110 as RCW 79.16.170 and 79.16.171.

79.16.173 Highways established by RCW 79.16.130-79.16.171—Acquisition of property. The department of natural resources may acquire by purchase, gift, exchange, or condemnation any lands, property, or interest therein from any political subdivision of the state, municipal corporation, the federal government or person for the purpose of expanding, improving, or facilitating the use of lands herein reserved for such public highway and recreation purposes. [1963 c 212 § 2.]

79.16.175 Certain tidelands reserved for recreational use and taking of fish and shellfish. The following described tidelands, being public lands of the state, are withdrawn from sale or lease and reserved as public areas for recreational use and for the taking of fish and shellfish for personal use as defined in RCW 75.04.070:

Parcel No. 1. (Point Whitney) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to or abutting upon lots 3, 4, and 5, section 7, township 26 north, range 1 west, W.M., with a frontage of 72.45 lineal chains, more or less.

Excepting, however, those portions of the above described tidelands of the second class conveyed to the state of Washington, department of fisheries and game through deed issued May 14, 1925 under application No. 8136, records of department of public lands.

Parcel No. 2. (Point Whitney) The tidelands of the second class lying below the line of mean low tide, owned by the state of Washington, situate in front of lot 1, section 6, township 26 north, range 1 west, W.M., with a frontage of 21.00 lineal chains, more or less; also

The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to or abutting upon lots 6 and 7, and that portion of lot 5, section 1, township 26 north, range 1 west, W.M., lying south of a line running due west from a point on the government meander line which is S 22° E 1.69 chains from an angle point in said meander line which is S 15° W 1.20 chains, more or less, from the point of intersection of the north line of said lot 5 and said meander line, with a frontage of 40.31 lineal chains, more or less.

Parcel No. 3. (Toandos Peninsula) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, and 3, section 5, lots 1, 2, and 3, section 4, and lot 1, section 3, all in township 25 north, range 1 west, W.M., with a frontage of 158.41 lineal chains, more or less.

Parcel No. 4. (Shine) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, 3 and that portion of lot 4 lying north of the south 8.35 chains thereof as measured along the government meander line, all in section 35, township 28 north, range 1 east, W.M., with a frontage of 76.70 lineal chains, more or less.

Subject to an easement for right of way for county road granted to Jefferson county December 8, 1941 under application No. 1731, records of department of public lands.

Parcel No. 5. (Lilliwaup) The tidelands of the second class, owned by the state of Washington, lying easterly of the east line of vacated state oyster reserve plat No.

133 produced southerly and situate in front of, adjacent to or abutting upon lot 9, section 30, lot 8, section 19 and lot 5 and the south 20 acres of lot 4, section 20, all in township 23 north, range 3 west, W.M., with a frontage of 62.46 lineal chains, more or less.

Subject to easements for rights of way for state road granted through the filing of state road plats No. 374 December 15, 1930, No. 661, March 29, 1949 and No. 666 August 25, 1949, records of department of public lands.

Parcel No. 6. (Nemah) Those portions of the tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 5, 6, and 7, section 3 and lots 1, 2, and 3, section 4, township 12 north, range 10 west, W.M., lots 1, 2, 3, and 4, section 34, section 27 and lots 1, 2, 3 and 4, section 28, township 13 north, range 10 west, W.M., lying easterly of the easterly line of the Nemah Oyster reserve and easterly of the easterly line of a tract of tidelands of the second class conveyed through deed issued July 28, 1938 pursuant to the provisions of chapter 24, Laws of 1895 under application No. 9731, with a frontage of 326.22 lineal chains, more or less.

Parcels No. 7 and 8. (Penn Cove) The unplatted tidelands of the first class, and tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1 and 2, section 33, lots 1, 2, 3, and 4, section 32, lots 2 and 3 and the B.P. Barstow D.L.C. No. 49, sections 30 and 31 and that portion of the R.H. Lansdale D.L.C. No. 54 in section 30, lying west of the east 3.00 chains thereof as measured along the government meander line, all in township 32 north, range 1 east, W.M., with a frontage of 260.34 lineal chains, more or less.

Excepting, however, the tidelands above the line of mean low tide in front of said lot 1, section 32 which were conveyed as tidelands of the second class through deed issued December 29, 1908 application No. 4957, records of department of public lands.

Subject to an easement for right of way for transmission cable line granted to the United States of America Army Engineers June 7, 1943 under application No. 17511, records of department of public lands.

Parcel No. 9. (South of Penn Cove) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 2, 3 and 4, section 17 and lots 1, 2 and 3, section 20, township 31 north, range 2 east, W.M., with a frontage of 129.97 lineal chains, more or less.

Parcel No. 10. (Mud Bay—Lopez Island) The tidelands of the second class, owned by the state of Washington situate in front of, adjacent to, or abutting upon lots 5, 6 and 7, section 18, lot 5, section 7 and lots 3, 4, and 5, section 8, all in township 34 north, range 1 west, W.M., with a frontage of 172.11 lineal chains, more or less.

Excepting, however, any tideland of the second class in front of said lot 3, section 8 conveyed through deeds issued April 14, 1909 pursuant to the provisions of chapter 24, Laws of 1895 under application No. 4985, records of department of public lands.

Parcel No. 11. (Cattle Point) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lot 1, section 6, lots 1, 3, 4, 5, 6, 7, 8, 9, and 10, section 7, lots 1, 2, 3, 4, 5, 6 and 7, section 8 and lot 1, section 5, all in township 34 north, range 2 west, W.M., with a frontage of 463.88 lineal chains, more or less.

Excepting, however, any tidelands of the second class in front of said lot 10, section 7 conveyed through deed issued June 1, 1912 under application No. 6906, records of department of public lands.

Parcel No. 12. (Spencer Spit) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 3, and 4, section 7, and lot 5, section 18 all in township 35 north, range 1 west, W.M., with a frontage of 118.80 lineal chains, more or less. [1955 c 387 § 1.]

Certain tidelands enumerated in this section have been transferred to the jurisdiction of the state parks and recreation commission: See RCW 43.51.240.

79.16.176 Certain tidelands reserved for recreational use and taking of fish and shellfish—Access to and from tidelands. The director of fisheries may take appropriate action to provide public and private access, including roads and docks, to and from the tidelands herein described. [1955 c 387 § 2.]

79.16.180 Disposition of rentals from harbor areas and tidelands. The rents hereinafter to be paid under existing or future leases of harbor areas and also of tidelands belonging to the state of Washington, the proceeds of which are not otherwise directed to a particular account or which are appropriated by the 1967 legislature to finance the Washington state canal commission shall be hereafter disposed of as follows:

In cases where the leased harbor area or tideland is situated within the territorial limits of a port district already created or to be hereafter created under the laws of the state of Washington, twenty-five percent of the rents received for such cases shall be paid by the state treasurer to the county treasurer of the county wherein such port district is situated for the use of such port district and go into a special fund to be expended only for harbor or waterfront improvement purposes and the remaining seventy-five percent shall be deposited in the capitol purchase and development account of the general fund of the state treasury and shall only be subject to appropriation for purchasing, improving, and managing the east capitol site; except that in cases where the port district itself shall have presently constructed or shall now own existing structures or improvements situate upon leased harbor areas, or tidelands, the entire rentals of such improved area or tideland shall go to such port district: *Provided*, That whenever the port district shall hereafter construct improvements on such leased harbor areas or tideland the rental attributable to such improvements shall go to the port district. In all other cases twenty-five percent of the rents shall be paid by the state treasurer into the county treasury of the county in which the leased harbor areas or tidelands are situated, the same to go into a special fund known

as the "harbor improvement fund", and to be disbursed only for harbor or harbor improvement purposes; and the remaining seventy-five percent shall be deposited in the capitol purchase and development account of the general fund of the state treasury. In cases where any leased harbor area or tideland is situated within the limits of any incorporated city or town and is not embraced within the area of any port district, the county commissioners of the county shall allocate the funds received from the lease thereof to the municipal authorities of such city or town, to be expended by said authorities for harbor or waterfront purposes. The state treasurer being hereby authorized and directed to make such payments to the respective county treasurers for the use of such port districts or counties, as the case may be, on the first days of July and January of each year, of all moneys in his hands on such dates payable under the terms of this section to such port district and counties respectively. [1967 ex.s. c 105 § 2; 1937 c 115 § 1; 1913 c 170 § 1; RRS § 8016.]

Severability—1967 ex.s. c 105: See RCW 79.24.646.

Port districts: Title 53 RCW.

79.16.190 Permits to use waterways. Whenever, in any waterways created under the laws of the state of Washington, the government of the United States shall have established pierhead lines in said waterway at any distance from the boundaries thereof established by the state, no structure shall be allowed in the strip of waterway between the boundary and the nearest pierhead line except by the consent of the state land commissioner and upon plans approved and terms and conditions fixed by him, and then only for such period of use as shall be designated by him, but any permit shall not extend for a longer period than thirty years: *Provided, however,* That the owner of land abutting upon either side of any such waterway shall have the right, if application be made therefor within a period of ninety days following the date when this section shall go into effect, to obtain such a permit for a thirty year term, and every permit obtained by virtue of the exercise of such right shall provide that the area described therein or such reasonable portion thereof as shall be designated by the state land commissioner, having in view the requirements of the business proposed to be carried on thereon, shall be improved upon plans approved by the state land commissioner, the construction of such improvement to be commenced within such time as may be fixed in each case by the state land commissioner, such time to be in no case less than two years from the date of such permit, to be completed within such reasonable time thereafter as the state land commissioner shall fix in each case, any of which times so fixed may be thereafter extended by him, the character of which improvements may be changed either before or after completion with the consent of the state land commissioner, but in all cases where the abutting owner or one claiming under him had prior to February 22, 1913, built upon such area, his improvements shall be recognized and accepted as a sufficient compliance with the requirements of this section so far as concerns the area covered thereby, and as to uncovered area such improvements shall be

given the same consideration as in other cases, and every permit obtained by virtue of the exercise of such right shall further provide that the annual rental to be paid shall be a sum equal to two percent of the assessed valuation for the year preceding the date of such permit of an equal area of adjoining or abutting shore or tide lands, exclusive of improvements thereon, and where the adjoining or abutting strip of shore or tide lands is of less width than the harbor area, a value proportional to said width: *Provided further, however,* That the foregoing provision fixing the rate of rental shall not extend beyond December 31, 1928, but all rentals after that date shall be subject to be controlled and fixed in the manner and by the public authority or authorities then provided by law for the same: *Provided further,* That it shall not be necessary for any public corporation proposing to make use of any such strip of waterway to acquire by condemnation or otherwise the right hereby granted relating thereto, but nothing herein contained shall be construed to deprive any party to any such condemnation proceeding of any damages to which he would have been entitled if this section had not been passed. The state land commissioner shall require of the holder of every permit under this section a bond with sufficient surety, to be approved by said commissioner, in such penalty, and not exceeding twice the amount of the annual rental, but in no case less than five hundred dollars, as may be prescribed by said commissioner, conditioned for the payment of the rental reserved in the permit at or prior to the time of payment therein specified, during the term of such permit or during such part thereof as said commissioner in his discretion shall require to be covered by such bond; and in case only a part of the term of such permit shall be covered thereby, said commissioner shall require another like bond, to be executed and delivered within three months and not less than one month prior to the expiration of the period covered by the previous bond, covering the remainder of the term of the permit, or such part thereof as said commissioner in his discretion shall require to be covered thereby. The said commissioner shall have power at any time to summon sureties upon any bond and to examine into the sufficiency thereof, and if he shall find the same to be insufficient he shall require the holder of the permit to file a new and sufficient bond within thirty days after receiving notice so to do, under penalty of cancellation of the permit; and the said commissioner shall have power upon sixty days' notice to cancel any permit for a substantial breach by the holder thereof of any of the conditions thereof, or for lack of a bond therewith as herein required. In any case where such waterway shall be within the territorial limits of a port district organized under the laws of the state of Washington, the duties herein assigned to the state land commissioner shall be exercised by the port commission of such port district, and in every case the rentals received shall be disposed of as follows: Seventy-five percent shall be paid by the state treasurer to the county treasurer of the county wherein such port district is situated, for the use of said port district and twenty-five percent, into the state

treasury, except that in cases where the port district itself shall have constructed or shall own structures or improvements situate upon such strip of waterway the entire rentals for such improved strip of waterway shall be paid directly to such county treasurer for the use of such port district. Nothing herein contained shall confer upon, create or recognize in any abutting owner any right or privilege in or to any strip of waterway abutting any street and between prolongations of the lines of such street, but the control of and the right to use such strip is hereby reserved to the state of Washington, except that in cases situate in a port district such control and use shall vest in such port district. [1913 c 168 § 1; RRS § 8017.]

Port districts: Title 53 RCW.

79.16.325 Day Island Waterway—Vacation—Relocation of harbor lines. The commissioner of public lands is hereby authorized to vacate by replat and with the approval of the board of state land commissioners relocate the harbor lines in Day Island Waterway, as shown on the official map of Tacoma Tide Lands on file in the office of the commissioner of public lands at Olympia, Washington. [1955 c 199 § 1.]

Relocation of harbor lines, powers of harbor line commission: State Constitution Art. 15 § 1 (Amendment 15).

79.16.326 Day Island Waterway—Area vacated to be platted as tideland—Sale. The portion of Day Island Waterway vacated under the terms of RCW 79.16.325 shall be platted as tideland and be subject to sale by the commissioner of public lands under the general tideland statutes of the state of Washington. [1955 c 199 § 2.]

79.16.375 Sale of state-owned tide or shore lands to municipal corporation or state agency. The commissioner of public lands, may with the advice and approval of the board of state land commissioners sell state-owned tide or shore lands at the appraised market value to a municipal corporation or agency of the state of Washington when said land is to be used solely for municipal or state purposes. [1957 c 186 § 1.]

79.16.376 Sale of state-owned tide or shore lands to municipal corporation or state agency—Authority to execute agreements, deeds, etc. The commissioner of public lands shall with the advice and approval of the attorney general, execute such agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to effect such sale or exchange. [1957 c 186 § 2.]

79.16.380 Boundary of shorelands when water lowered—Certain shorelands granted to city of Seattle. In every case where the state of Washington has heretofore sold to any purchaser from the state any second class shorelands bordering upon navigable waters of this state by description wherein the water boundary of the land so purchased is not defined, such water boundary shall be held and is hereby declared to be the line of ordinary navigation in such water; and whenever such

waters have heretofore been or shall hereafter be lowered by any action done or authorized either by the state of Washington or the United States such water boundary shall thereafter be held and is hereby declared to be the line of ordinary navigation as the same shall be found in such waters after such lowering, and there is hereby granted and confirmed to every such purchaser, his heirs and assigns, all such lands: *Provided, however,* That RCW 79.16.380 and 79.16.400 shall not apply to such portions of such second class shorelands which shall as hereinafter provided be selected by the commissioner of public lands of the state of Washington for harbor areas, slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys, or other public purposes: *Provided, further,* That all shorelands and the bed of Lake Washington from the southerly margin of the plat of Lake Washington shorelands southerly along the westerly shore of said lake to a line three hundred feet south of and parallel with the east and west center line of section 35, township 24 north, range 4 east, W.M., are hereby reserved for public uses and are hereby granted and donated to the city of Seattle for public park, parkway and boulevard purposes, and as a part of its public park, parkway and boulevard system and any diversion or attempted diversion of such lands so donated from such purposes shall cause the title to said lands to revert to the state. [1913 c 183 § 1; RRS § 9733. Formerly RCW 79.16.380 and 79.16.390.]

79.16.400 Selection for slips, docks, wharves, etc. Within twelve months after the taking effect of RCW 79.16.380 and 79.16.400 it shall be the duty of the commissioner of public lands to survey such second class shorelands and in platting such survey to designate thereon as selected for public use all of such shorelands as in the opinion of said commissioner of public lands is available, convenient or necessary to be selected for the use of the public as harbor areas and sites for slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys and other public purposes. Upon the filing of such plat in the office of the commissioner of public lands, the title to all harbor area so selected shall remain in the state, the title to all selections for streets, avenues and alleys shall vest in any city or town within the corporate limits of which they may be then situate, otherwise in the county in which situate, the title to and control of any lands so selected and designated upon such plat for parkway and boulevard purposes shall, if the same lie outside of the corporate limits of any city or town and if the same form a part of the general parkway and boulevard system of a city of the first class, be in such city, the title to all selections for commercial waterway district purposes shall vest in the commercial waterway district in which situate, or for which selected, and the title to all selections for slips, docks, wharves, warehouses and other public purposes shall vest in the port district if they be situate in a port district, otherwise in the county in which situate. [1913 c 183 § 2; RRS § 9734.]

Commercial waterway districts: Chapter 91.04 RCW.

Port districts: Title 53 RCW.

79.16.405 Platting of certain shorelands of Lake Washington for use as harbor area—Effect. As soon as practicable after the taking effect of RCW 79.16.405 and 79.16.406 it shall be the duty of the commissioner of public lands to plat for the public use harbor area in front of such portions of the shorelands of Lake Washington heretofore sold as second class shorelands by the state of Washington as in the opinion of said commissioner are necessary for the use of the public as harbor area: *Provided, however,* That RCW 79.16.405 and 79.16.406 shall not be construed to authorize said commissioner to change the location of any inner or outer harbor line or the boundaries or location of, or to replat any harbor area heretofore platted under and by virtue of RCW 79.16.380 and 79.16.400; and the title to all shorelands heretofore purchased from the state as second class shorelands is hereby confirmed to such purchaser, his heirs and assigns, out to the inner harbor line heretofore established and platted under RCW 79.16.380 and 79.16.400 or which shall be established and platted under RCW 79.16.405 and 79.16.406, and all reservations shown upon the plat made and filed pursuant to RCW 79.16.380 and 79.16.400, are declared null and void, except reservations shown thereon for harbor area and reservations in such harbor area and reservations across shorelands for traversed streets which were extensions of streets existing across shorelands at the time of filing of such plat. Said land commissioner shall in platting said harbor area make a new plat showing all the harbor area on Lake Washington already platted under said RCW 79.16.380 and 79.16.400 and under RCW 79.16.405 and 79.16.406; and upon the adoption of said new plat by the said board of land commissioners acting as a harbor commission and the filing of said plat in the office of the commissioner of public lands, the title to all said harbor area so selected shall remain in the state of Washington, and such harbor area shall not be sold, but may be leased, as provided by law relating to the leasing of such harbor area. [1917 c 150 § 1; RRS § 9601.]

79.16.406 Platting of certain shorelands of Lake Washington for use as harbor area—Selection for slips, docks, wharves, etc.—Vesting of title. Immediately after establishing the harbor area provided for herein, it shall be the duty of the commissioner of public lands to make a plat designating thereon all shorelands, of the first and second class, not theretofore sold by the state of Washington, and to select for the use of the public out of such shorelands, or out of harbor areas in front thereof, sites for slips, docks, wharves, warehouses, streets, avenues, parkways, boulevards, alleys, commercial waterways and other purposes, insofar as such shorelands may be available for any or all such purposes, and upon the filing of such plat of shorelands with such reservations and selections thereon, in the office of the commissioner of public lands, the title to all selections for streets, avenues and alleys shall vest in any city or town within the corporate limits of which they may be then situate, otherwise in the county in which situate. The title to and control of any lands so selected and designated upon such plat for parkway

and boulevard purposes shall, if the same lie outside of the corporate limits of any city or town, and if the same form a part of the general parkway and boulevard system of a city of the first class, be in such city. The title to all selections for commercial waterway purposes shall vest in the commercial waterway in which situate, or for which selected, and the title to all selections for slips, docks, wharves, warehouses and other purposes shall vest in the port district if they be situate in a port district, otherwise in the county in which situated, and any sales of such shorelands hereafter shall be made subject to such selection and reservation for public use. In case of any reservations made as hereinbefore provided for the city of Seattle or the port of Seattle out of first class shorelands platted prior to the first of March, 1917, the city council or the port commission shall within sixty days after the filing of the plat by the land commissioner showing such reservations file an acceptance thereof with the land commissioner and within two years after the filing of such acceptance pay to the state of Washington the appraised value of such shorelands of the first class so reserved and accepted for the benefit of the Alaska-Yukon-Pacific Exposition, and shoreland improvement fund, and in default of making such payment within such time said reservations shall be null and void and such reservations shall be subject to sale in the same manner as if they had not been made: *Provided, however,* That in case all outstanding warrants issued against the Alaska-Yukon-Pacific Exposition and shorelands improvement funds are paid in full prior to the expiration of the two year period provided for above, then any reservation of first and second class shorelands made for the city of Seattle or the port of Seattle and accepted and not paid for shall vest in municipality for which the reservation was made without said municipality being required to pay to the state of Washington the appraised valuation thereof. [1917 c 150 § 2; RRS § 9602.]

79.16.410 Street slopes on tide or shore lands. The commissioner of public lands shall have power to approve plans for and authorize the construction of slopes, with rock or other protection, upon any tidelands, shorelands, harbor areas and waterways owned by the state of Washington, incident to the improvement of any abutting or adjacent street or avenue by any city or town in this state. [1931 c 70 § 1; RRS § 8009-1.]

79.16.430 Excavation of waterways through state lands—Filling of tide and shore lands—Contract—Lien—Bond—Lands affected. The commissioner of public lands of the state of Washington may, when in his judgment the interests of commerce would be subserved thereby, enter into contract with any person or persons, or incorporated companies doing business in the state of Washington, for the excavation of any waterway or waterways through any lands belonging to the state of Washington, or to any citizen or corporation of said state, and for the filling in and

raising above high tide of any tide or shore lands belonging to the state of Washington, and upon the completion of such contract such person or persons or incorporated company shall become entitled to and shall have a lien, as in *this act provided, upon all tide and shore lands belonging to the state of Washington, adjacent to such waterway, and remaining unsold at the date of the approval of *this act, that they may fill in and raise above high tide, and all purchasers of said tide and shore lands from the state of Washington shall take the same subject to said lien: *Provided, however,* That such contract shall not become binding or operative until approved by the governor, nor until such person or persons or incorporated company shall have filed with the commissioner of public lands, a bond in the penal sum of not less than twenty-five hundred, nor more than twenty-five thousand dollars, as in the judgment of said commissioner of public lands shall be considered necessary in a particular case, with sureties to be approved by said commissioner of public lands, said bond to be conditioned for the faithful performance of said contract: *Provided further,* That no lands shall be affected thereby except lands within or in front of incorporated cities or towns, or within one mile thereof on either side, or lands between any inner and outer harbor lines established by proper authority. [1893 c 99 § 1; RRS § 9603.]

***Reviser's note:** "this act" appears in 1893 c 99 codified as RCW 79.16.430 through 79.16.520.
Waterways: Title 91 RCW.

79.16.440 Excavation of waterways through state lands—Requisites of excavation contract. Said contract with the commissioner of public lands shall specify the waterway or waterways proposed to be excavated, and the lands to be affected thereby, and shall be accompanied by a map of the locality or localities showing said waterway or waterways, and their relation to the harbor lines and reservations in front of the cities or towns where the same are located, and shall show the tide and shore lands to be filled in and raised above high tide, properly designated and subdivided as nearly in accordance with the existing subdivisions of abutting uplands as the proper location of said waterway or waterways will permit, and shall specify and exhibit the waterway or waterways proposed to be excavated as to their depth and width and extent: *Provided,* That when harbor lines and waterways have been established by the harbor line commission of the state, no other waterways shall be excavated except the waterways exhibited on the final maps of said harbor line commission, except with the consent and approval of such harbor line commission; and where no harbor lines and waterways have been so established then the plan mentioned in said contract must, before being adopted by said commissioner, be submitted to and approved by the harbor line commission: *And provided further,* That if no harbor line commission be in existence, then the commissioner of public lands shall establish waterways which may be excavated as herein provided. [1893 c 99 § 2; RRS § 9604.]

Harbor line commission: Chapter 79.01 RCW.

79.16.450 Excavation of waterways through state lands—Time of commencement and completion. Said contract shall specify the time of beginning work on said waterway or waterways, and the time when such work shall be completed: *Provided,* That the time set for the beginning of said work shall be within six months of the signing of said contract, and the time set for the completion of said work shall be a reasonable time, to be determined in each case by the commissioner of public lands, according to the difficulties to be encountered: *And provided further,* That said commissioner of public lands, upon showing of due diligence on the part of the contracting parties may grant an extension of the time for the beginning or completion of said work. [1893 c 99 § 3; RRS § 9605.]

79.16.460 Excavation of waterways through state lands—Certificate of cost—Lien—Payment. Upon the completion of the work, provided for by said contract, or any part thereof, capable of separate use for the purposes of navigation, according to the terms and conditions of said contract, and within the time provided therein, or such further extension of time as may have been granted by virtue of RCW 79.16.450, the commissioner of public lands shall issue his certificate to the contracting parties, or their assigns, showing the actual cost of the filling in and raising above high tide of all tide and shore lands so filled in and raised above high tide by such completion of said work, or such separate portion thereof, and specifying and describing, with reasonable certainty, the lands so filled in and raised above high tide. Upon the filing in the office of the county auditor of the county or counties in which such lands are situated, of such certificate of the commissioner of public lands, said contracting parties shall acquire a lien, and the same shall thereupon attach, for the amount specified in such certificate, with fifteen percent additional thereon, and with interest on such amount and additional percentage from the date of such certificate at the rate of eight percent per annum until payment: *Provided, however,* That such lien shall not be operative for an amount exceeding the cost of the work as stated in the contract, or, as the case may be, such portion of said stated cost as shall be proportionate to the part of the work with reference to which the certificate has issued, upon the bonds specified in such certificate. Such lien shall not be in solido, and upon the sale by the state to any person, or by any owner claiming under the state to any other person, of any of the tide and shore lands specified in such certificate, the lien herein granted may be discharged, as hereinbelow provided, as to any such part of said lands separately granted or owned, upon the payment of such part of the amount for which the lien upon the lands was given in the first instance as shall bear the same proportion to said whole amount which the area of such separate part of such lands bears to the area of the whole thereof. The amount due on such lien, or any proportionate part thereof separately payable as above provided, shall be payable by any owner of said lands, or any part thereof separately owned, as the case may

be, other than the state, in ten equal annual installments, the first installment at the end of the first year after the sale of such lands, or of such separate portion thereof, by the state; and the remaining installments, one at the end of each year thereafter, with accompanying interest on each of such installments, as hereinbefore provided, to the time of the payment thereof, and such lien may be foreclosed in the manner provided by law for the foreclosure of other liens on real estate for nonpayment of the whole amount due, or of any separate installment or installments thereof which shall have become due. If such lands specified in any such certificate shall not be sold by the state, within one year after the date of such certificate, the parties in whose favor such certificate was issued, or their assigns, shall have the option during the next succeeding six months to purchase such lands, or any part thereof, from the state in the manner provided by then existing laws for the sale of tidelands of the state. *This act shall not be so construed as to create any obligation on the part of the state to pay or discharge any lien which may attach to such lands by virtue of the provisions thereof. [1893 c 99 § 4; RRS § 9606.]

*Reviser's note: "This act", see note following RCW 79.16.430.
Liens: Title 60 RCW.

79.16.470 Excavation of waterways through state lands—Notice of intention to apply—Notice of pendency of application. Any person or persons, or any corporation, doing business in this state may give notice in writing to the commissioner of public lands of his or their intentions to comply with the provisions of *this act at any given locality or localities, describing the same in general terms, and thereafter they shall have ninety days after the completion of the publication hereinafter mentioned within which to prepare the maps, specifications and contracts herein provided for. And the giving of said notice shall place the lands described therein subject to the operation of *this act until the making and signing of the contracts herein provided for, and the making and signing of said contract shall make the lands described therein subject to the operating of *this act pending its execution, and all persons or corporations purchasing said lands from the state in the meantime shall take the same subject to the ultimate lien upon the same, provided for herein: *Provided, however,* That this section shall not be so construed as to require the commissioner of public lands to enter into any contract whatever, or the governor to approve any contract whatever; and said commissioner of public lands shall have the right to refuse to make any contract, and the governor shall have the right to refuse to approve any such contract which in their judgment or in the judgment of either of them would be detrimental to the interests of the state: *And provided further,* That the commissioner of public lands shall publish for thirty days, at the expense of the applicant, in some newspaper of general circulation, in the county where said lands are situated, notice of the pendency of such application, and request all interested parties to appear before him at the time and place mentioned in said notice and state their objections; and no contract shall be

entered into by the commissioner of public lands for the improvement of any such waterway or waterways until after the date fixed in said notice at which interested parties may appear and be heard. [1893 c 99 § 5; RRS § 9607.]

*Reviser's note: "this act", see note following RCW 79.16.430.

79.16.480 Excavation of waterways through state lands—Right of way granted. A right of way is hereby granted for any waterway or waterways herein provided for through any lands belonging to the state of Washington of sufficient width to accommodate said waterway or waterways; the width and definite location of such right of way, however, shall be plainly and completely specified in the contract herein provided for. [1893 c 99 § 6; RRS § 9608.]

79.16.490 Excavation of waterways through state lands—Bulkheads—Minimum depth. All contracts provided for herein shall specify the character of all bulkheads and other restraining works and be accompanied by drawings and specifications of the same, and the commissioner of public lands shall be the judge of the sufficiency thereof, and of the minimum depth to which any waterway shall be excavated, in order to make the same useful for the purposes of commerce and navigation. [1893 c 99 § 7; RRS § 9609.]

79.16.500 Excavation of waterways through state lands—Apportionment of cost. In ascertaining the cost of filling in and raising above high tide of any tide or shore lands, the cost of all bulkheads, and other restraining works, and the cost of filling in and raising above high tide of all streets, alleys and public squares or places, shall be apportioned to the lands benefited thereby, in addition to the cost of filling in such lands. [1893 c 99 § 8; RRS § 9610.]

79.16.510 Excavation of waterways through state lands—Waterways open to public—Tide gates or locks. All waterways excavated through any tide or shore lands belonging to the state of Washington by virtue of the provisions of *this act, so far as they run through said tide or shore lands, are hereby declared to be public waterways, free to all citizens upon equal terms, and subject to the jurisdiction of the proper authorities, as provided by law: *Provided,* That where tide gates or locks are considered, by the contracting parties excavating any waterways, to be necessary to the efficiency of the same, the commissioner of public lands may, in his discretion, authorize such tide gates or locks to be constructed and may authorize the parties constructing the same to operate them and collect a reasonable toll from vessels passing through said tide gates or locks: *Provided further,* That the state of Washington or the United States of America can, at any time, appropriate said tide gates or locks upon payment to the parties erecting them, of the reasonable value of the same at the date of such appropriation, said reasonable value to be ascertained and determined as in other cases of condemnation of private property for public use. [1893 c 99 § 9; RRS § 9611.]

*Reviser's note: "this act". see note following RCW 79.16.430.
Eminent domain: Title 8 RCW.

79.16.520 Excavation of waterways through state lands—Appraisal of tidelands proposed to be filled. If the commissioner of public lands shall determine to let any contract for the excavation of a waterway, as hereinbefore provided, the tideland appraisers appointed in the county in which said tidelands lie, shall forthwith appraise the tidelands which it is proposed to fill in by the excavation of such waterway, at their actual value at the time of letting such contract, and the said lands so appraised shall never be disposed of by the state for less than such appraised value. [1893 c 99 § 10; RRS § 9612.]

79.16.530 Lease of beds of navigable waters. The commissioner of public lands may lease to the abutting tide or shore land owner or lessee, the beds of navigable waters lying below the line of extreme low tide in waters where the tide ebbs and flows, and below the line of navigability in lakes and rivers claimed by the state and defined in section 1, article XVII of the Constitution of the state, or in case the abutting tide or shore lands or the abutting uplands are not improved or occupied for residential or commercial purposes, may lease such beds to any person, firm or corporation for a period not exceeding ten years for booming purposes. Nothing in RCW 79.16.530 through 79.16.560 shall change or modify any of the provisions of the state Constitution or laws of the state which provide for the leasing of harbor areas and the reservation of lands lying in front thereof. [1953 c 164 § 1.]

Construction—1953 c 164: "Nothing in this act is intended to modify or repeal any existing statutes providing for the leasing of the beds of navigable waters of the state for oyster cultivation or extraction of minerals or petroleum and gas." [1953 c 164 § 5.] This applies to RCW 79.16.530 through 79.16.560.

79.16.540 Lease of beds of navigable waters—Terms and conditions of lease—Forfeiture for nonuser. The commissioner of public lands shall, prior to the issuance of any lease under the provisions of RCW 79.16.530 through 79.16.560, fix the annual rental and prescribe the terms and conditions of the lease: *Provided*, That in the fixing of such annual rental the commissioner shall not take into account the value of any improvements heretofore or hereafter placed upon the lands by the lessee. No lease issued under the provisions of RCW 79.16.530 through 79.16.560 shall be for a longer term than thirty years from the date thereof if in front of second class tide or shore lands, or a longer term than ten years if in front of unplatted first class tide or shore lands leased under the provisions of RCW 79.01.536. Any lease of the bed of navigable waters in front of unplatted first class tide or shore lands, shall be subject to the same terms and conditions as provided in the lease of such unplatted first class tide or shore lands. Failure to use any lands leased under the provisions of RCW 79.16.530 through 79.16.560 for booming purposes for a period of two years shall work a forfeiture of the said lease and the land shall revert to the state without notice to the lessee upon the entry of a

declaration of forfeiture in the records of the commissioner of public lands. [1953 c 164 § 2.]

79.16.550 Lease of beds of navigable waters—Improvements—Federal permit—Forfeiture—Plans and specifications. The applicant for a lease under the provisions of RCW 79.16.530 through 79.16.560 shall first obtain, from the United States army engineers or other federal regulatory agency, a permit to place structures or improvements in said navigable waters and file with the commissioner of public lands a copy of the said permit. No structures or improvements shall be constructed beyond a point authorized by the United States army engineers or the commissioner of public lands and any construction beyond authorized limits will work a forfeiture of all rights granted by the terms of any lease issued under the provisions of RCW 79.16.530 through 79.16.560. The applicant shall also file plans and specifications of any proposed improvements to be placed upon such areas with the commissioner of public lands, said plans and specifications to be the same as provided for in the case of the lease of harbor areas. [1953 c 164 § 3.]

79.16.560 Lease of beds of navigable waters—Preference right to re-lease. At the expiration of any lease issued under the provisions of RCW 79.16.530 through 79.16.560, the lessee, his successors or assigns, shall have a preference right to re-lease the area covered by the original lease or any portion thereof if the commissioner of public lands deems it to the best interest of the state to re-lease the same. Such re-lease shall be for such term as specified by the provisions of RCW 79.16.530 through 79.16.560 and at such rental and upon such conditions as may be prescribed by the commissioner of public lands. If such preference right is not exercised, the rights and obligations of the lessee, the commissioner of public lands, and any subsequent lessee shall be as provided in RCW 79.01.548 relating to failure to re-lease tide or shore lands. Any person who heretofore has occupied and improved an area subject to lease under RCW 79.16.530 through 79.16.560 and has secured a permit for such improvements from the United States army engineers or other federal regulatory agency, shall have the rights and obligations of a lessee under this section upon the filing of a copy of such permit together with plans and specifications of such improvements with the commissioner of public lands. [1953 c 164 § 4.]

79.16.570 Sale of rock, gravel, sand and silt. The commissioner of public lands, upon application by any person, firm, or corporation, may enter into a contract or lease providing for the removal and sale of rock, gravel, sand and silt located upon beds of navigable waters and any tidelands and shorelands owned by the state and providing for payment to be made therefor by such royalty as the commissioner may fix. [1955 c 386 § 1.]

79.16.580 Sale of rock, gravel, sand and silt—Application—Terms of lease or contract—Bond—Payment—Reports. Each application made pursuant to RCW 79.16.570 hereof shall set forth the estimated quantity and kind of materials desired to be removed and shall be accompanied by a map or plat showing the area from which the applicant wishes to remove such materials. The commissioner of public lands may in his discretion include in any lease or contract entered into pursuant to RCW 79.16.570 through 79.16.590, such terms and conditions protecting the interests of the state as he may require. In each such lease or contract the commissioner of public lands shall provide for a right of forfeiture by the state, upon a failure to operate under the lease or contract or pay royalties for periods therein stipulated, and he shall require a bond with a surety company authorized to transact a surety business in this state, as surety, to secure the performance of the terms and conditions of such contract or lease, including the payment of royalties. The right of forfeiture shall be exercised by entry of a declaration of forfeiture in the records of the commissioner of public lands. The amount of rock, gravel, sand, or silt taken under the contract or lease shall be reported monthly by the purchaser to the commissioner of public lands and payment therefor made on the basis of the royalty provided in the lease or contract. [1955 c 386 § 2.]

79.16.590 Sale of rock, gravel, sand and silt—Investigation, audit of books of person removing. The commissioner of public lands may inspect and audit books, contracts and accounts of each person removing rock, gravel, sand, or silt pursuant to any such lease or contract and make such other investigation and secure or receive any other evidence necessary to determine whether or not the state is being paid the full amount payable to it for the removal of such materials. [1955 c 386 § 3.]

Chapter 79.20 OYSTER LANDS

Sections

79.20.090	Sale or lease of tidelands set aside as oyster reserves.
79.20.100	Inspection and report by director of fisheries.
79.20.110	Vacation of reserve—Sale or lease of lands.
79.20.150	Resurvey and appraisalment of certain reserves.
79.20.160	Resurvey and appraisalment of certain reserves—Sale of lands other than first class.
79.20.170	Resurvey and appraisalment of certain reserves—Provisions concurrent.
79.20.180	Resurvey and appraisalment of certain reserves—Disposition of proceeds from sale of land.

Reviser's note: The powers and duties of the commissioner of public lands mentioned in this chapter have devolved upon the department of natural resources, see reviser's note following Title 79 RCW digest.

Game department shooting grounds subject to production of oysters: RCW 77.40.090.

Importation of oysters: RCW 75.08.054, 75.08.056.

Oyster culture: Title 75 RCW.

Sanitary control of shellfish: Chapter 69.30 RCW.

79.20.090 Sale or lease of tidelands set aside as oyster reserves. The commissioner of public lands is hereby authorized to sell or lease tidelands which have heretofore or which may hereafter be set aside as state oyster reserves in the same manner as provided for the disposition of second class shorelands insofar as the statutes relating to the sale of such second class shorelands may be applicable to the sale of tidelands in state oyster reserves. [1929 c 224 § 1; RRS § 7797-149a.]

Sale, lease, disposal of oyster reserves: RCW 75.24.030.

79.20.100 Inspection and report by director of fisheries. The commissioner of public lands, upon the receipt of an application for the purchase or lease of any tidelands which have heretofore or which may hereafter be set aside as state oyster reserves, shall notify the director of fisheries and game of the filing of the application, describing the lands applied for. And it shall be the duty of the director of fisheries and game to cause an inspection of the reserve to be made for the purpose of determining whether said reserve or any part thereof should be retained as a state oyster reserve or vacated. [1929 c 224 § 2; RRS § 7797-149b.]

Reviser's note: The powers and duties of the director of fisheries and game referred to herein were transferred to the director of fisheries by 1933 c 3 §§ 1, 5.

Director of fisheries: Chapter 75.08 RCW.

79.20.110 Vacation of reserve—Sale or lease of lands. In case the director of fisheries and game approves the vacation of the whole or any part of said reserve, the commissioner of public lands may vacate and offer for sale or lease such parts or all of said reserve as he deems to be for the best interest of the state, and all moneys received for the sale or lease of such lands shall be paid into the state treasury to the credit of the state oyster reserve fund: *Provided*, That nothing in *this act shall be construed as authorizing the sale or lease of any tidelands which have heretofore, or which may hereafter, be set aside as state oyster reserves in Eld Inlet, Hammersley Inlet or Totten Inlet, situated in Mason or Thurston counties: *Provided, further*, That any portion of Plat 138, Clifton's Oyster Reserve, which has not already been vacated, may be sold or leased by the commissioner of public lands of the state of Washington in the same manner as other lands under his control and direction. [1933 c 76 § 1; 1929 c 224 § 3; RRS § 7797-149c.]

***Reviser's note:** (1) "this act" first appears in 1929 c 224 codified as RCW 79.20.090 through 79.20.110. (2) "director of fisheries and game", see note following RCW 79.20.100. (3) "state oyster reserve fund", see note following RCW 79.01.556.

Sale, lease, disposal of oyster reserves: RCW 75.24.030.

79.20.150 Resurvey and appraisalment of certain reserves. The state oyster commission is hereby authorized and directed to cause a resurvey and appraisalment of the state oyster land reserves of Jefferson county, and to file plats thereof in the manner now provided by law, and to indicate thereupon all such portions thereof as are natural oyster beds, which shall be classified as first class. [1907 c 208 § 1; RRS § 8069.]

Reviser's note: The powers and duties of the "state oyster commission" have devolved upon the department of natural resources through a chain of statutes as follows: (1) 1921 c 7 §§ 119, 135 and (2) 1957 c 38 § 13.

79.20.160 Resurvey and appraisalment of certain reserves—Sale of lands other than first class. After the survey, appraisalment and filing of the plat as hereinbefore provided for, and upon application of any person or persons, for purchase of any portion of the said land, other than first class, the said state oyster commission shall cause notice thereof to be given in the manner now provided by law, for the sale of other tidelands, and at the time and place designated in said notice, shall proceed to sell the same at public auction, to the highest bidder, the same not to be sold at less than the appraised value: *Provided*, That not more than fifty acres shall be sold to any one individual or corporation: *And provided, further*, That payment may be made for said land in cash, or upon the following terms, to wit: One-tenth cash to be paid at time of sale, and the balance of the purchase price in deferred payments of nine equal annual payments, with interest on all deferred payments, at the rate of six percent per annum. [1907 c 208 § 2; RRS § 8070.]

Reviser's note: "state oyster commission", see note following RCW 79.20.150.

Sale, lease, disposal of oyster reserves: RCW 75.24.030.

79.20.170 Resurvey and appraisalment of certain reserves—Provisions concurrent. Nothing in RCW 79.20.150 through 79.20.180 contained shall change, modify or repeal any existing provisions of the general law relating to the sale and use of tidelands for the culture of oysters or other shellfish, but shall be additional thereto and concurrent therewith, and all sales of tidelands made hereunder for the purpose of the culture of oysters or other shellfish shall be subject to like conditions and reversions prescribed by existing laws for similar lands sold for like purposes. [1907 c 208 § 3; RRS § 8071.]

Shellfish: Chapter 75.24 RCW.

79.20.180 Resurvey and appraisalment of certain reserves—Disposition of proceeds from sale of land. For the purpose of carrying out the provisions of RCW 79.20.150 through 79.20.180, the sum of two thousand dollars, or so much thereof as may be necessary is hereby appropriated from the general fund of the state: *Provided, however*, That from the proceeds of the sale of any such lands, the amount appropriated or so much thereof as may be used, for the purposes hereinbefore provided, shall be reimbursed to the state general fund, and thereafter fifty percent of the amount received from the sales of any such lands shall be paid into the state general fund and fifty percent shall be paid into a fund to be used for the improvement, protection and supervision of the state oyster reserves. [1907 c 208 § 4; RRS § 8072.]

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Chapter 79.24 CAPITOL BUILDING LANDS

Sections

GENERAL

- 79.24.010 Designation of lands—Sale, manner, consent of board.
- 79.24.020 Use of funds restricted.
- 79.24.030 Employment of assistants—Payment of expenses.
- 79.24.060 Disposition of proceeds of sale—Publication of notice of proposals or bids.
- 79.24.085 Disposition of money from sales.
- 79.24.087 Capitol grant revenue to capitol building construction account.

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- 79.24.100 Bond issue authorized.
- 79.24.110 Sale of bonds—Price—Investment of funds in.
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CAPITOL BUILDINGS

- 79.24.200 Bond issue authorized.
- 79.24.210 Sale of bonds.
- 79.24.220 Form, term, etc., of bonds—Refunding prior issues.
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- 79.24.500 Property described.
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 - 79.24.570 Use of proceeds from site.
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 - 79.24.590 Use of private real estate and rights in site declared public use.
 - 79.24.600 Severability—1961 c 167.
- EAST CAPITOL SITE—1967 BOND ISSUE**
- 79.24.630 Revenue bonds authorized—Amount—Interest and maturity—Payable from certain funds.
 - 79.24.632 Sale of bonds.

- 79.24.634 Maturities—Covenants—Section's provisions as contract with bond holders—Where payable.
- 79.24.636 Signatures—Registration.
- 79.24.638 Payment of principal and interest—State building bond redemption fund—Reserve—Owner's remedies—Disposition of proceeds of sale.
- 79.24.640 Bonds as security and legal investment.
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- 79.24.644 Appropriation.
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- 79.24.646 Severability—1967 ex.s. c 105.
- 79.24.647 Severability—1969 ex.s. c 273.

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- 79.24.650 Committee duties enumerated.
- 79.24.652 Bonds authorized—Amount—Interest and maturity—Payable from certain revenues.
- 79.24.654 Maturities—Covenants—Section's provisions as contract with bond holders—Where payable.
- 79.24.656 Signatures—Registration.
- 79.24.658 Payment of principal and interest—State building and parking bond redemption fund—Reserve—Owner's remedies—Disposition of proceeds of sale.
- 79.24.660 Bonds as security and legal investment.
- 79.24.662 Use of bond proceeds.
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- 79.24.666 State capitol committee to act upon advice of legislative committee—State capitol committee powers.
- 79.24.668 Severability—1969 ex.s. c 272.

Control of traffic on capitol grounds: RCW 46.08.150 and 46.08.160.

State capitol committee: Chapter 43.34 RCW.

GENERAL

79.24.010 Designation of lands—Sale, manner, consent of board. All lands granted to the state by the federal government for the purpose of erecting public buildings at the state capitol shall be known and designated as "Capitol Building Lands". None of such lands, nor the timber or other materials thereon, shall hereafter be sold without the consent of the board of natural resources and only in the manner as provided for public lands and materials thereon. [1959 c 257 § 42; 1909 c 69 § 2; RRS § 7898.]

79.24.020 Use of funds restricted. All funds arising from the sale of lands granted to the state of Washington for the purpose of erecting public buildings at the state capital shall be held intact for the purpose for which they were granted. Lands when selected and assigned to said grant shall not be transferred to any other grant, nor shall the moneys derived from said lands be applied to any other purpose than for the erection of buildings at the state capital. [1893 c 83 § 1; RRS § 7896.]

79.24.030 Employment of assistants—Payment of expenses. The board of natural resources and the state capitol committee may employ such cruisers, draughtsmen, engineers, architects or other assistants as may be necessary for the best interests of the state in carrying out the provisions of *this act, and all expenses incurred by the board and committee, and all claims against the general fund—capitol building construction account

shall be audited by the state capitol committee and presented in vouchers to the state treasurer, who shall draw a warrant therefor against the general fund—capitol building construction account as herein provided or out of any appropriation made for such purpose. [1973 c 106 § 37; 1959 c 257 § 43; 1911 c 59 § 12; 1909 c 69 § 7; RRS § 7903.]

***Reviser's note:** "this act" first appears in 1909 c 69 codified as RCW 79.24.010 and 79.24.030 through 79.24.085.

79.24.060 Disposition of proceeds of sale—Publication of notice of proposals or bids. The proceeds of such sale of capitol building lands, or the timber or other materials shall be paid into the general fund—capitol building construction account to be used as in *this act provided. All contracts for the construction of capitol buildings shall be let after notice for proposals or bids have been advertised for at least four consecutive weeks in at least three newspapers of general circulation throughout the state. [1959 c 257 § 44; 1911 c 59 § 10; 1909 c 69 § 5; RRS § 7901.]

***Reviser's note:** "this act", see note following RCW 79.24.030.

79.24.085 Disposition of money from sales. All sums of money received from sales shall be paid into the general fund—capitol building construction account in the state treasury, and are hereby appropriated for the purposes of *this act. [1959 c 257 § 46; 1909 c 69 § 8; RRS § 7904.]

***Reviser's note:** "this act", see note following RCW 79.24.030.

79.24.087 Capitol grant revenue to capitol building construction account. All revenues received from leases and sales of lands, timber and other products on the surface or beneath the surface of the lands granted to the state of Washington by the United States pursuant to an act of Congress approved February 22, 1889, for capitol building purposes, shall be paid into the "capitol building construction account". [1923 c 12 § 1; RRS § 7921-1. Formerly RCW 43.34.060.]

DESCHUTES BASIN

79.24.100 Bond issue authorized. The state capitol committee may issue coupon or registered bonds of the state of Washington in an amount not exceeding one million dollars. The bonds shall bear interest at a rate not to exceed five percent per annum, both principal and interest to be payable only from the capitol building construction fund from revenues hereafter received from leases and contracts of sale heretofore or hereafter made of lands, timber, and other products from the surface or beneath the surface of the lands granted to the state by the United States pursuant to the act of congress approved February 22, 1889, for capitol building purposes. [1947 c 186 § 1; Rem. Supp. 1947 § 7921-10.]

Capitol building construction fund abolished and moneys transferred to capitol building construction account: RCW 43.79.330-43.79.334.

State capitol committee: Chapter 43.34 RCW.

79.24.110 Sale of bonds—Price—Investment of funds in. Such bonds may be sold in such manner and in such amount, in such denominations, and at such times as the capitol committee shall determine, at the best price obtainable, but not for a sum so low as to make the net interest return to the purchaser exceed five percent per annum as computed by standard tables upon such sums; or the state treasurer may invest surplus cash in the accident fund in such bonds at par, at such rate of interest, not exceeding five percent as may be agreed upon between the treasurer and the state capitol committee, and the state finance committee may invest any surplus cash in the general fund, not otherwise appropriated, in such bonds at par at such rate of interest, not exceeding five percent, as may be agreed upon between the state finance committee and the state capitol committee. [1947 c 186 § 2; Rem. Supp. 1947 § 7921-11.]

Accident fund: RCW 51.44.010.

State finance committee: Chapter 43.33 RCW.

State treasurer: Chapter 43.08 RCW.

79.24.120 Life of bonds—Payment of interest. Bonds issued under RCW 79.24.100 through 79.24.160 shall be payable in such manner, at such place or places, and at such time or times, not longer than twenty years from their date; with the option of paying any or all of said bonds at any interest paying date, as shall be fixed by the capitol committee, and the interest on the bonds shall be payable semiannually. [1947 c 186 § 3; Rem. Supp. 1947 § 7921-12.]

79.24.130 Signatures—Registration of bonds. The bonds shall be signed by the governor and state auditor under the seal of the state, and any coupons attached thereto shall be signed by the same officers, whose signatures thereupon may be printed facsimile. Any of such bonds may be registered in the name of the holder upon presentation to the state treasurer, or at the fiscal agency of the state in New York, as to principal alone, or as to both principal and interest, under such regulations as the state capitol committee may prescribe. [1947 c 186 § 4; Rem. Supp. 1947 § 7921-13.]

79.24.140 Proceeds to capitol building construction account. The proceeds from the sale of the bonds hereby authorized shall be paid into the capitol building construction fund. [1947 c 186 § 5; Rem. Supp. 1947 § 7921-14.]

Reviser's note: "capitol building construction fund", see note following RCW 79.24.100.

79.24.150 Bonds as security and legal investment. Bonds authorized by RCW 79.24.100 through 79.24.160 shall be accepted by the state, counties, cities, towns, school districts, and other political subdivisions as security for the deposit of any of their funds in any banking institution. Any officer of this state, or any county, city, town, school district, or other political subdivision may invest surplus funds, which he is authorized to invest in securities, and where such authorization is not limited or restricted as to the class of

securities in which he may invest, in bonds issued under RCW 79.24.100 through 79.24.160. [1947 c 186 § 6; Rem. Supp. 1947 § 7921-15.]

79.24.160 Use of proceeds specified. Proceeds of the bonds issued hereunder shall be expended by the state capitol committee in the completion of the DesChutes Basin project adjacent to the state capitol grounds. Such project shall embrace, (1) the acquisition by purchase or condemnation of necessary lands or easements; (2) the construction of a dam or weir along the line of Fifth Avenue in the city of Olympia and a parkway and railroad over the same; (3) the construction of a parkway on the west bank of the DesChutes Basin from the Pacific highway at the DesChutes River to a connection with the Olympic highway; (4) the construction of a parkway from the vicinity of Ninth Avenue and Columbia Street in the city of Olympia around the south side of the north DesChutes Basin, using the existing railroad causeway, to a road along Percival Creek and connecting with the Olympic highway; (5) the preservation of the precipitous banks surrounding the basin by the acquisition of easements or other rights whereby the cutting of trees and the building of structures on the banks can be controlled; (6) the construction by dredging of varying level areas at the foot of the bluffs for access to water and to provide for boating and other recreational areas, and (7) such other undertakings as, in the judgment of the committee, are necessary to the completion of the project.

In connection with the establishment of parkways, causeways, streets and highways, or the relocation thereof, and the rerouting of railroads to effectuate the general plan of the basin project, the committee shall at all times cooperate with the department of highways, the proper authorities of the city of Olympia, and the railroad companies which may be involved in the rerouting of railway lines. [1947 c 186 § 7; Rem. Supp. 1947 § 7921-16.]

CAPITOL BUILDINGS

79.24.200 Bond issue authorized. The state capitol committee may issue coupon or registered bonds of the state in an amount not to exceed four million five hundred thousand dollars. The bonds shall bear interest at a rate not to exceed five percent per annum, both principal and interest to be payable only from revenues hereafter received from leases and contracts of sale heretofore or hereafter made of lands, timber, and other products from the surface or beneath the surface of the lands granted to the state by the United States pursuant to the act of Congress approved February 22, 1889, for capitol building purposes. [1957 c 62 § 1; 1955 c 279 § 1.]

Severability—1957 c 62. "If any provision of this act shall be declared unconstitutional or ineffective in whole or in part by a court of competent jurisdiction, then to the extent that it is unconstitutional or ineffective, such provision shall not be enforced, nor shall such determination be deemed to invalidate or to affect in any way the remaining provisions of this act." [1957 c 62 § 8.] This applies to RCW 79.24.200-79.24.220, 79.24.240, 79.24.260-79.24.280.

1951 c 22 § 1: "The state capitol committee may issue coupon or registered bonds of the state in an amount not to exceed two million four hundred fifty thousand dollars. The bonds shall bear interest at a rate not to exceed three percent per annum, both principal and interest to be payable only from revenues hereafter received from leases and contracts of sale heretofore or hereafter made of lands, timber, and other products from the surface or beneath the surface of the lands granted to the state by the United States pursuant to the act of congress approved February 22, 1889, for capitol building purposes."

1953 c 187 § 1: "The state capitol committee may issue coupon or registered bonds of the state in an amount not to exceed four million three hundred thousand dollars. The bonds shall bear interest at a rate not to exceed four percent per annum, both principal and interest to be payable only from revenues hereafter received from leases and contracts of sale heretofore or hereafter made of lands, timber, and other products from the surface or beneath the surface of the lands granted to the state by the United States pursuant to the act of congress approved February 22, 1889, for capitol building purposes."

1955 c 279 § 1: "The state capitol committee may issue coupon or registered bonds of the state in an amount not to exceed four million three hundred thousand dollars. The bonds shall bear interest at a rate not to exceed four percent per annum, both principal and interest to be payable only from revenues hereafter received from leases and contracts of sale heretofore or hereafter made of lands, timber, and other products from the surface or beneath the surface of the lands granted to the state by the United States pursuant to the act of congress approved February 22, 1889, for capitol building purposes."

79.24.210 Sale of bonds. Such bonds may be sold in such manner and in such amounts, in such denominations and at such times as the capitol committee shall determine, and at the best price obtainable. They shall be sold at such price and interest rate that the net interest cost shall not exceed five percent. [1957 c 62 § 2; 1955 c 279 § 2.]

1951 c 22 § 2: "Such bonds may be sold in such manner and in such amount, in such denominations, and at such times as the capitol committee shall determine, at the best price obtainable, but not for a sum so low as to make the net interest return to the purchaser exceed three percent per annum as computed by standard tables upon such sums."

1953 c 187 § 2: "Such bonds may be sold in such manner and in such amount, in such denominations, and at such times as the capitol committee shall determine, at the best price obtainable, but not for a sum so low as to make the net interest return to the purchaser exceed four percent per annum as computed by standard tables upon such sums."

1955 c 279 § 2: "Such bonds may be sold in such manner and in such amount, in such denominations, and at such times as the capitol committee shall determine, at the best price obtainable, but not for a sum so low as to make the net interest return to the purchaser exceed four percent per annum as computed by standard tables upon such sums."

79.24.220 Form, term, etc., of bonds—Refunding prior issues. Bonds issued under this act shall mature at such time or times, and include such provisions for optional redemption, premiums, coverage, guarantees, and other covenants as in the opinion of the state capitol committee may be necessary. The principal and interest of said bonds shall be payable at the office of the state treasurer, or at the office of the fiscal agent of the state in New York City at the option of the holder of any such bond or bonds. Any bonds which may have been heretofore issued and are now outstanding by authority of chapter 22, Laws of 1951 as amended, may be refunded out of the proceeds of the bonds provided for in this amendatory act and the state capitol committee

may repeal any resolution heretofore adopted authorizing issuance of such bonds and may negotiate a cancellation of any agreements to purchase such bonds. [1957 c 62 § 3; 1955 c 279 § 3; 1951 c 22 § 3.]

1951 c 22 § 3: "Bonds issued under this act shall mature serially and annually beginning with the second and ending with the tenth year after the date of issue in such amounts as nearly as practicable, as will, together with the interest, require an equal amount of money for the payment of said principal and interest, with the option to redeem any or all of said bonds at par in inverse order of number on any semiannual interest paying date on and after five years from the date of issue. The principal and interest of said bonds shall be payable at the office of the state treasurer, or at the office of the fiscal agent of the state in New York City at the option of the holder of any such bond or bonds."

1955 c 279 § 3: "Bonds issued under this act shall mature serially and annually beginning two years after date of issue and ending not later than the twentieth year after the date of issue in such amounts as nearly as practicable, as will, together with the interest, require an equal amount of money for the payment of said principal and interest, with the option to redeem any or all of said bonds at par in inverse order of number on any semiannual interest paying date. The principal and interest of said bonds shall be payable at the office of the state treasurer, or at the office of the fiscal agent of the state in New York City at the option of the holder of any such bond or bonds. Any bonds which may have been heretofore issued and are now outstanding by authority of chapter 22, Laws of 1951 as amended, may be refunded out of the proceeds of the bonds provided for in this amendatory act and the state capitol committee may repeal any resolution heretofore adopted authorizing issuance of such bonds and may negotiate a cancellation of any agreements to purchase such bonds."

79.24.230 Signatures—Registration of bonds. The bonds shall be signed by the governor and state auditor under the seal of the state which may be printed or engraved in the border of such bonds. The signature of the governor may be a facsimile printed upon the bonds and any coupons attached thereto shall be signed with the facsimile signatures of said officials. Any of such bonds may be registered in the name of the holder upon presentation to the state treasurer, or at the fiscal agency of the state in New York City, as to principal alone, or as to both principal and interest, under such regulations as the treasurer may prescribe. [1955 c 279 § 4; 1951 c 22 § 4.]

1951 c 22 § 4: "The bonds shall be signed by the governor and state auditor under the seal of the state. The signature of the governor and that of the state auditor may be a facsimile printed upon the bonds and any coupons attached thereto shall be signed by the same officers whose signatures thereupon may be printed facsimile. Any of such bonds may be registered in the name of the holder upon presentation to the state treasurer, or at the fiscal agency of the state in New York City, as to principal alone, or as to both principal and interest, under such regulations as the treasurer may prescribe."

79.24.240 Payment of principal and interest—Capitol building bond redemption fund—Disposition of proceeds from sale. For the purpose of paying the principal and interest of said bonds as the same shall become due, or as said bonds become callable at the option of the capitol committee, there is hereby created a fund to be denominated the "capitol building bond redemption fund." While any of said bonds remain outstanding and unpaid, it shall be the duty of the capitol committee in December of each year to determine the amount that will be required for the redemption of bonds and the payment of interest during the twelve

month period of the next calendar year, and certify said amount to the state treasurer in writing. The state treasurer shall forthwith and thereafter during said twelve month period deposit into the capitol building bond redemption fund all receipts that would otherwise be deposited in the general fund—capitol building construction account until the amount certified to said treasurer by the said capitol committee has accrued to the capitol building bond redemption fund.

In addition to certifying and providing for the annual amounts required to pay the principal and interest of said bonds, the capitol committee may, under such terms and conditions and at such times and in such amounts as may be found necessary to insure the sale of said bonds, provide for additional payments into the capitol building bond redemption fund to be held as a reserve to secure the payment of the principal and interest of such bonds.

The owner and holder of any of said bonds or the trustee for any of said bonds may by mandamus or other appropriate proceeding require and compel the deposit and payment of funds as directed herein.

The proceeds from the sale of the bonds hereby authorized shall be paid into the general fund—capitol building construction account. [1957 c 62 § 4; 1955 c 279 § 5.]

1951 c 22 § 5: "For the purpose of paying the principal and interest of said bonds as the same shall become due, or as said bonds shall become callable at the option of the capitol committee, there is hereby created a fund to be denominated the 'capitol building bond redemption fund.' While any of said bonds remain outstanding and unpaid, it shall be the duty of the capitol committee annually on or before the first day of January of each year to determine the amount that will be required for the redemption of bonds and the payment of interest during the twelve month period next succeeding the date of such determination, and certify said amount to the state treasurer in writing. The state treasurer shall forthwith and thereafter during said twelve month period deposit into the capitol building bond redemption fund all receipts that would otherwise be deposited in the capitol building construction fund until the amount certified to said treasurer by the said capitol committee has accrued to the capitol building bond redemption fund.

The owner and holder of any of said bonds or the trustee for any of said bonds may be mandamus or other appropriate proceeding require and compel the deposit and payment of funds as directed herein.

The proceeds from the sale of the bonds hereby authorized shall be paid into the capitol building construction fund."

1955 c 279 § 5: "For the purpose of paying the principal and interest of said bonds as the same shall become due, or as said bonds become callable at the option of the capitol committee, there is hereby created a fund to be denominated the 'capitol building bond redemption fund.' While any of said bonds remain outstanding and unpaid, it shall be the duty of the capitol committee in December of each year to determine the amount that will be required for the redemption of bonds and the payment of interest during the twelve month period of the next calendar year, and certify said amount to the state treasurer in writing. The state treasurer shall forthwith and thereafter during said twelve month period deposit into the capitol building bond redemption fund all receipts that would otherwise be deposited in the capitol building construction fund until the amount certified to said treasurer by the said capitol committee has accrued to the capitol building bond redemption fund.

The owner and holder of any of said bonds or the trustee for any of said bonds may by mandamus or other appropriate proceeding require and compel the deposit and payment of funds as directed herein.

The proceeds from the sale of the bonds hereby authorized shall be paid into the capitol building construction fund."

79.24.250 Bonds as security and legal investment.

Bonds authorized by this act shall be accepted by the state, counties, cities, towns, school districts, and other political subdivisions as security for the deposit of any of their funds in any banking institution. Any officer of this state, or any county, city, town, school district, or other political subdivision may invest surplus funds, which he is authorized to invest in securities, and where such authorization is not limited or restricted as to the class of securities in which he may invest, in bonds issued under this act. [1955 c 279 § 6.]

1951 c 22 § 6: "Bonds authorized by this act shall be accepted by the state, counties, cities, towns, school districts and other political subdivisions as security for the deposit of any of their funds in any banking institution. Any officer of this state, or any county, city, town, school district, or other political subdivision may invest surplus funds, which he is authorized to invest in securities, and where such authorization is not limited or restricted as to the class of securities in which he may invest, in bonds issued under this act."

79.24.260 Use of proceeds specified. Proceeds of the bonds issued hereunder shall be expended by the state capitol committee for the purposes enumerated in this section.

The state capitol committee may select and acquire, by purchase or condemnation, suitable grounds adjacent to the present capitol grounds and construct thereon a modern office-type building and furnish the same. Said building shall be reinforced concrete construction, but devoid of stone facing or decorative features. The building shall contain not less than one hundred ten thousand square feet of floor space and shall include an auditorium or hearing room of reasonable size. The plans for the building shall make provision for the later addition if necessary of another wing to the building. The public printer, and such other state agencies, departments, and offices, as may from time to time be assigned by the director of public institutions [director of general administration], director of public institutions, shall be housed in said building. The building referred to in this subsection is that building which was commenced under authority of chapter 22, Laws of 1951, as amended by chapter 187, Laws of 1953, and which presently is under construction.

The state capitol committee shall construct and furnish a building upon the following approximate location: south and west of the Public Lands and Social Security Building; south and east of the Transportation Building; occupying the west portion of the state-owned land lying south of these two buildings, west of Water Street, and north of the terminus of Sylvester street. This building shall be used for the purpose of housing the state library together with all books, materials, equipment, and offices thereof. This shall be a priority project and, except for current expenses of the capitol committee, expenses incurred for the planning of authorized projects or expenditures necessitated through catastrophe or dire emergency declared to be such by the capitol committee, no capitol building funds (other than payments authorized in section 4 of this act [RCW 79.24.240]) shall be expended until the state library building is under construction. [1957 c 62 § 5; 1955 c 279 § 7; 1953 c 187 § 3; 1951 c 22 § 7.]

1951 c 22 § 7: "Proceeds of the bonds issued hereunder shall be expended by the state capitol committee in the selection and acquisition, by purchase or condemnation of suitable grounds adjacent to the present capitol grounds in the construction thereon of a modern office-type building and in furnishing the same. Said building shall be of reinforced concrete construction, but devoid of stone facing or decorative features. The building shall contain not less than one hundred ten thousand square feet of floor space and shall include an auditorium or hearing room of reasonable size. Provision shall be made for adequate garage and parking facilities. The plans for the building shall make provision for the later addition if necessary of another wing to the building.

The public printer, the state library and such other state offices, as may from time to time be assigned by the director of public institutions, shall be housed in said building. In selecting plans for the construction of the building and use of the grounds the committee shall consider recommendations of the director of public institutions for the purpose of coordinating such plans with the over-all office space needs of the various state departments."

1953 c 187 § 3: "Proceeds of the bonds issued hereunder shall be expended by the state capitol committee in the selection and acquisition, by purchase or condemnation, of suitable grounds adjacent to the present capitol grounds, in the construction thereon of a modern office-type building and in furnishing the same. Said building shall be reinforced concrete construction, but devoid of stone facing or decorative features. The building shall contain not less than one hundred ten thousand square feet of floor space and shall include an auditorium or hearing room of reasonable size. Provision shall be made for adequate garage and parking facilities. The plans for the building shall make provision for the later addition if necessary of another wing to the building.

The public printer, and such other state agencies, departments, and offices, as may from time to time be assigned by the director of public institutions, shall be housed in said building. In selecting plans for the construction of the building and use of the grounds, the committee shall consider recommendations of the director of public institutions for the purpose of coordinating such plans with the over-all office space needs of the various state departments."

1955 c 279 § 7: "Proceeds of the bonds issued hereunder shall be expended by the state capitol committee for the purposes enumerated in this section.

The state capitol committee may:

(1) Select and acquire, by purchase or condemnation, suitable grounds adjacent to the present capitol grounds and construct thereon a modern office-type building and furnish the same. Said building shall be reinforced concrete construction, but devoid of stone facing or decorative features. The building shall contain not less than one hundred ten thousand square feet of floor space and shall include an auditorium or hearing room of reasonable size. The plans for the building shall make provision for the later addition if necessary of another wing to the building. The public printer, and such other state agencies, departments and offices, as may from time to time be assigned by the director of public institutions, shall be housed in said building. The building referred to in this subsection is that building which was commenced under authority of chapter 22, Laws of 1951, as amended by chapter 187, Laws of 1953, and which presently is under construction;

(2) Construct and furnish a building for the purpose of adequately housing the state library together with all books, materials, equipment, and offices thereof;

(3) Clear piling and debris from Capitol Lake.

The improvements provided for in subsection (2) of this section shall be located either upon the present capitol grounds or upon lands contiguous thereto. The capitol committee may select such lands and acquire them by purchase or condemnation. As an aid to such selection, the committee may cause location, topographical, economic, traffic, and other surveys to be conducted, and for this purpose may utilize the services of existing state agencies, may employ personnel, or may contract for the services of any person, firm or corporation. In selecting plans for the construction of the improvements authorized by this section and use of the grounds, the committee shall consider recommendations of the director of public institutions for the purpose of coordinating such plans with the over-all office space needs of the various state departments."

Powers and duties of the director of public institutions transferred to director of general administration: Chapter 43.19 RCW.

79.24.270 Appropriation. There is appropriated to the state capitol committee from the capitol building construction fund for the interim period, April 1 through June 30, 1955 (being the period following the fiscal biennium April 1, 1953 through March 31, 1955; and preceding the fiscal biennium July 1, 1955 through June 30, 1957) and for the fiscal biennium commencing July 1, 1955 and ending June 30, 1957, for the purposes of this act, the sum of four million four hundred seventeen thousand, seven hundred eighteen dollars and fifty-nine cents, or so much thereof as may be necessary, which sum represents the total of the following amounts: (a) Unexpended balance of amount appropriated in chapter 22, Laws of 1951, and reappropriated in chapter 187, Laws of 1953, one million two hundred ninety-two thousand, seven hundred eighteen dollars and fifty-nine cents; (b) unexpended new appropriation in chapter 187, Laws of 1953, one million eight hundred fifty thousand dollars.

There is appropriated to the state capitol committee from the general fund—capitol building construction account the sum of one million seven hundred thousand dollars or so much thereof as may be necessary for the state library building, site, and furnishings. [1957 c 62 § 6; 1955 c 279 § 8.]

1951 c 22 § 8: "There is hereby appropriated to the state capitol committee from the capitol building construction fund for the biennium ending March 31, 1953, for the purpose of carrying out the provisions of this act, the sum of two million four hundred fifty thousand dollars or so much thereof as may be necessary."

1953 c 187 § 4: "There is appropriated to the state capitol committee from the capitol building construction fund for the biennium ending March 31, 1955, for the purposes of carrying out the provisions of chapter 22, Laws of 1951, as amended by this act, the sum of two million one hundred fifty-nine thousand three hundred thirty-nine dollars and two cents, or so much thereof as may be necessary, being the unexpended balance of the amount appropriated by said chapter 22, Laws of 1951, for the biennium ending March 31, 1953. There is further appropriated to the state capitol committee from the capitol building construction fund for the purposes of carrying out the provisions of chapter 22, Laws of 1951, as amended by this act, the additional sum of one million eight hundred fifty thousand dollars, or so much thereof as may be necessary."

1955 c 279 § 8: "There is appropriated to the state capitol committee from the capitol building construction fund for the the interim period, April 1 through June 30, 1955 (being the period following the fiscal biennium April 1, 1953 through March 31, 1955; and preceding the fiscal biennium July 1, 1955 through June 30, 1957) and for the fiscal biennium commencing July 1, 1955 and ending June 30, 1957, for the purposes this act, the sum of four million four hundred seventeen thousand, seven hundred eighteen dollars and fifty-nine cents, or so much thereof as may be necessary, which sum represents the total of the following amounts: (a) Unexpended balance of amount appropriated in chapter 22, Laws of 1951 and reappropriated in chapter 187, Laws of 1953, one million two hundred ninety-two thousand, seven hundred eighteen dollars and fifty-nine cents; (b) unexpended new appropriation in chapter 187, Laws of 1953, one million eight hundred fifty thousand dollars; (c) new appropriation herein, one million two hundred seventy-five thousand dollars."

79.24.280 Powers of capitol committee. The capitol committee shall have the power to do all acts and things necessary or convenient to carry out the purposes of this act. [1957 c 62 § 7.]

PARKING FACILITIES

79.24.300 Parking facilities authorized—Rental—Report and recommendations. The state capitol committee may construct parking facilities for the state capitol adequate to provide parking space for automobiles, said parking facilities to be either of a single level, multiple level, or both, and to be either on one site or more than one site and located either on or in close proximity to the capitol grounds, though not necessarily contiguous thereto. The state capitol committee may select such lands as are necessary therefor and acquire them by purchase or condemnation. As an aid to such selection the committee may cause location, topographical, economic, traffic, and other surveys to be conducted, and for this purpose may utilize the services of existing state agencies, may employ personnel, or may contract for the services of any person, firm or corporation. In selecting the location and plans for the construction of the parking facilities the committee shall consider recommendations of the director of general administration.

Space in parking facilities may be rented to the officers and employees of the state on a monthly basis at a rental to be determined by the director of general administration. The state shall not sell gasoline, oil, or any other commodities or perform any services for any vehicles or equipment other than state equipment. The director of general administration shall include in his biennial report a comprehensive statement on such parking facilities, their location and charges together with any recommendations he may have. [1965 c 129 § 1; 1955 c 293 § 1.]

Reviser's note: "director of public institutions", see note following RCW 79.24.260.

79.24.310 Number and location of facilities. The state capitol committee may construct any two of the following three facilities: (1) A two story parking facility south of the transportation and public lands building in the existing parking area; (2) multiple level but not to exceed three story parking facility adjacent to the new office building; (3) multiple level but not to exceed three story parking facility adjacent to the new office building. [1955 c 293 § 2.]

79.24.320 Appropriations—Parking facilities, laboratories. There is appropriated to the state capitol committee from the capitol building construction fund for the fiscal biennium ending June 30, 1957, the sum of seven hundred thousand dollars for the purposes of RCW 79.24.300, 79.24.310 and 79.24.320. Of this sum five hundred thousand dollars is to be used for parking purposes as outlined above and the remaining two hundred thousand dollars of this sum are to be used to complete the fisheries and health laboratories in the new office building on the contingency that it is necessary for the fisheries and health departments to move to Olympia. [1955 c 293 § 3.]

Reviser's note: "capitol building construction fund", see note following RCW 79.24.100.

79.24.330 Purchase of land for parking facilities authorized. For use in the construction thereon of parking facilities in close proximity to the capitol grounds, the state capitol committee is authorized to purchase, at a price not in excess of one hundred thousand dollars, the following real estate situated in the city of Olympia, Thurston county, state of Washington, and more particularly described as: Lots two, three, six, and seven, block eight, P.D. Moore's addition to the town of Olympia, according to the plat thereof recorded in volume 1 of plats, page 32, records of said county. [1957 c 257 § 1.]

79.24.340 Purchase of land for parking facilities authorized—Construction of one-level facility. After purchase of the said real estate the state capitol committee shall construct thereon one-level parking facilities suitable for as large a number of automobiles as may reasonably be accommodated thereon. [1957 c 257 § 2.]

SYLVESTER PARK

79.24.400 Sylvester Park—Grant authorized. The city of Olympia may grant to the state of Washington its right, title and interest in that public square situated therein and bounded by Capitol Way, Legion Way, Washington Street and East Seventh Street, and commonly known as Sylvester Park, and such conveyance shall in all respects supersede the terms and effect of any prior conveyance or agreement concerning this property. [1955 c 216 § 1.]

79.24.410 Sylvester Park—Subsurface parking facility. The state capitol committee may accept such grant on behalf of the state. Upon receipt from the city of Olympia of the conveyance authorized by RCW 79.24.400, the state capitol committee may lease the premises thereby conveyed, to any person, firm, or corporation for the purpose of constructing, operating and maintaining a garage and parking facility underneath the surface of said property.

The lease shall be for a term of not to exceed twenty-five years and by its terms shall require the lessee to restore and maintain the condition of the surface of the property so as to be available and suitable for use as a public park. The lease shall further provide that all improvements to the property shall become the property of the state upon termination of the lease, and may provide such further terms as the capitol committee may deem to be advantageous. [1955 c 216 § 2.]

ACCESS TO CAPITOL GROUNDS

79.24.450 Access to capitol grounds on described route authorized. The state capitol committee may construct a suitable access to the capitol grounds by way of fourteenth and fifteenth streets in the city of Olympia, and for the purpose may acquire, by purchase or condemnation, such lands along the said streets and between Capitol Way and Cherry Street in the city of Olympia, and construct thereon such improvements as

the state capitol committee may deem proper for the purposes of such access. [1957 c 258 § 1.]

EAST CAPITOL SITE

79.24.500 Property described. The state capitol committee shall proceed as rapidly as their resources permit to acquire title to the following described property for development as state capitol grounds:

That area bounded as follows: Commencing at a point beginning at the southwest corner of Capitol Way and 15th Avenue and proceeding westerly to the present easterly boundary of the capitol grounds on the west; thence proceeding northerly along said easterly boundary of the capitol grounds; thence proceeding easterly along the boundary of the present capitol grounds to a point at the corner of Capitol Way and 14th Avenue; thence proceeding southerly to the point of beginning; also that area bounded by Capitol Way on the west, 11th Avenue on the north, Jefferson Street on the east, and 16th Avenue (Maple Park) on the south; also that area bounded by Jefferson Street on the west, 14th Avenue on the north, Cherry Street on the east and 14th Avenue (Interstate No. 5 access) on the south; also that area bounded by 14th Avenue (Interstate No. 5 access) on the north, the westerly boundary of the Oregon-Washington Railroad & Navigation Co. right-of-way on the east, 16th Avenue on the south, and Jefferson Street on the west; also that area bounded by 15th Avenue on the north, the westerly boundary of the Oregon-Washington Railroad & Navigation Co. right-of-way on the east, and 14th Avenue (Interstate No. 5 access) on the south and west; all in the city of Olympia, county of Thurston, state of Washington, or any such portion or portions of the above described areas as may be required for present or future expansion of the facilities of the state capitol. [1967 ex.s. c 43 § 1; 1961 c 167 § 1.]

79.24.510 Area designated as the east capitol site. The area described in RCW 79.24.500 shall be known as the east capitol site, and upon acquisition shall become part of the state capitol grounds. [1961 c 167 § 2.]

79.24.520 Acquisition of property authorized—Means—Other state agencies to assist committee in executing chapter. The state capitol committee may acquire such property by gift, exchange, purchase, option to purchase, condemnation, or any other means of acquisition not expressly prohibited by law. All other state agencies shall aid and assist the state capitol committee in carrying out the provisions of RCW 79.24.500 through 79.24.600. [1961 c 167 § 3.]

79.24.530 Department of general administration to design and develop site and buildings—Approval of capitol committee. The department of general administration shall develop, amend and modify an overall plan for the design and establishment of state capitol buildings and grounds on the east capitol site in accordance with current and prospective requisites of a state capitol befitting the state of Washington. The

overall plan, amendments and modifications thereto shall be subject to the approval of the state capitol committee. [1961 c 167 § 4.]

79.24.540 State agencies may buy land and construct buildings thereon—Requirements. State agencies which are authorized by law to acquire land and construct buildings, whether from appropriated funds or from funds not subject to appropriation by the legislature, may buy land in the east capitol site and construct buildings thereon so long as the location, design and construction meet the requirements established by the department of general administration and approved by the state capitol committee. [1961 c 167 § 5.]

79.24.550 State buildings to be constructed only on capitol grounds—Exception. No state agency shall undertake construction of buildings in Thurston county except upon the state capitol grounds: *Provided*, That the state capitol committee may authorize exceptions upon a finding by the state capitol committee that appropriate locations on the capitol grounds or east capitol site are unavailable. [1961 c 167 § 6.]

79.24.560 Department of general administration to rent, lease or use properties. The department of general administration shall have the power to rent, lease, or otherwise use any of the properties acquired in the east capitol site. [1961 c 167 § 7.]

79.24.570 Use of proceeds from site. All moneys received by the department of general administration from the management of the east capitol site, excepting (1) funds otherwise dedicated prior to April 28, 1967, (2) parking and rental charges and fines which are required to be deposited in other accounts, and (3) reimbursements of service and other utility charges made to the department of general administration, shall be deposited in the capitol purchase and development account of the state general fund or, in the event that revenue bonds are issued as authorized by RCW 79.24.630 through 79.24.647, into the state building bond redemption fund pursuant to RCW 79.24.638. [1969 ex.s. c 273 § 11; 1963 c 157 § 1; 1961 c 167 § 8.]

Severability—1969 ex.s. c 273: See RCW 79.24.647.

79.24.580 Proceeds from sale of tide or shore lands or valuable materials therefrom dedicated to development of site—"Capitol purchase and development account" created. All moneys received by the state from the sale of tidelands, and shorelands, and from the sale of valuable material from tidelands, shorelands, beds of navigable waters and harbor areas, the proceeds of which have not otherwise been directed to a particular fund or account prior to April 28, 1967, or appropriated by the 1967 legislature to finance the Washington state canal commission, and from the lease of shorelands and beds of navigable waters, the proceeds of which have not otherwise been directed to a particular fund or account prior to April 28, 1967, or appropriated by the 1967 legislature to finance the Washington state canal commission, shall be deposited in the capitol purchase and

development account of the general fund, the creation of which is hereby authorized or, in the event that revenue bonds are issued as authorized by RCW 79.24.630 through 79.24.647, into the state building bond redemption fund pursuant to RCW 79.24.638. This account shall only be subject to appropriation for purchasing, improving, and managing the east capitol site or to pay the principal of and interest on revenue bonds or refunding revenue bonds issued for those purposes. [1969 ex.s. c 273 § 12; 1967 ex.s. c 105 § 3; 1961 c 167 § 9.]

Severability—1969 ex.s. c 273: See RCW 79.24.647.

79.24.590 Use of private real estate and rights in site declared public use. The use of the private real estate, rights, and interests in the east capitol site is hereby declared to be a public use. [1961 c 167 § 10.]

79.24.600 Severability—1961 c 167. If any provision of RCW 79.24.500 through 79.24.590, or its application to any person or circumstance is held invalid, the remainder of RCW 79.24.500 through 79.24.590, or the application of the provision to other persons or circumstances is not affected. [1961 c 167 § 11.]

EAST CAPITOL SITE—1967 BOND ISSUE

79.24.630 Revenue bonds authorized—Amount—Interest and maturity—Payable from certain funds. In addition to any authority previously granted, the state capitol committee is authorized and directed to issue coupon or registered revenue bonds of the state in an amount not to exceed four million dollars. The bonds shall bear interest at such rates and mature at such times as the state capitol committee shall determine by resolution. Both principal and interest shall be payable only from funds received and deposited in the capitol purchase and development account of the general fund or directly from proceeds provided in RCW 79.24.570. [1970 ex.s. c 14 § 1. Prior: 1969 ex.s. c 273 § 3; 1967 ex.s. c 105 § 4.]

79.24.632 Sale of bonds. Such bonds may be sold in such manner and in such amounts, in such denominations, at such price and at such times as the capitol committee shall determine. [1969 ex.s. c 273 § 4; 1967 ex.s. c 105 § 5.]

79.24.634 Maturities—Covenants—Section's provisions as contract with bond holders—Where payable. Bonds issued under RCW 79.24.630 through 79.24.646 shall mature at such time or times, and include such provisions for optional redemption, premiums, coverage, guarantees, and other covenants as in the opinion of the state capitol committee may be necessary. In issuing such bonds and including such provisions, the state capitol committee shall act for the state and all officers, departments and agencies thereof affected by such provisions, and the state and such officers, departments and agencies shall adhere to and be bound by such covenants. As long as any of such bonds shall be outstanding, neither the state, nor any of its officers, departments, agencies or instrumentalities, shall

divert any of the proceeds and revenues actually pledged to secure the payment of the bonds and interest thereon, and the provisions of this section shall restrict and limit the powers of the legislature of the state of Washington in respect to the matters herein mentioned as long as the bonds are outstanding and unpaid and shall constitute a contract to that effect for the benefit of the holders of all such bonds. The principal and interest of said bonds shall be payable at the office of the state treasurer, or at the office of the fiscal agent of the state in New York City at the option of the holder of any such bond or bonds. [1969 ex.s. c 273 § 5; 1967 ex.s. c 105 § 6.]

79.24.636 Signatures—Registration. The bonds shall be signed by the governor and state treasurer under the seal of the state which may be printed or engraved in the border of such bonds. The signature of the governor may be a facsimile printed upon the bonds and any coupons attached thereto shall be signed with the facsimile signature of said officials. Any of such bonds may be registered in the name of the holder upon presentation to the state treasurer, or at the fiscal agency of the state in New York City, as to principal alone, or as to both principal and interest, under such regulations as the treasurer may prescribe. [1969 ex.s. c 273 § 6; 1967 ex.s. c 105 § 7.]

79.24.638 Payment of principal and interest—State building bond redemption fund—Reserve—Owner's remedies—Disposition of proceeds of sale. For the purpose of paying the principal and interest of said bonds as the same shall become due, or as said bonds become callable at the option of the capitol committee, there is created a fund to be denominated the "state building bond redemption fund". While any of said bonds remain outstanding and unpaid, it shall be the duty of the capitol committee on or before June 30th of each year to determine the amount that will be required for the redemption of bonds and the payment of interest during the twelve-month period of the next fiscal year, and certify said amount to the state treasurer in writing. The state treasurer shall forthwith and thereafter during said twelve-month period and at least fifteen days prior to each interest and principal payment date deposit into the state building bond redemption fund that portion of all receipts necessary to pay the principal and interest on the bonds issued that would otherwise be deposited in the general fund—capitol purchase and development account and transfer such additional amounts from the general fund—capitol purchase and development account as may be necessary until the amount certified to said treasurer by the said capitol committee has accrued to the state building bond redemption fund. Nothing in RCW 79.24.630 through 79.24.642, 79.24.645, 79.24.647, 79.24.570 and 79.24.580 shall prohibit the use of such receipts from leases and contracts of sale for any other lawfully authorized purpose when not required for the redemption and payment of interest and meeting the covenant requirements of the bonds authorized herein.

In addition to certifying and providing for the annual amounts required to pay the principal and interest of said bonds, the capitol committee may, under such terms and conditions and at such times and in such amounts as may be found necessary to insure the sale of said bonds, provide for additional payments into the state building bond redemption fund to be held as a reserve to secure the payment of the principal and interest of such bonds.

The owner and holder of any of said bonds or the trustee for any of said bonds may by mandamus or other appropriate proceeding require and compel the deposit and payment of funds as directed herein.

The proceeds from the sale of the bonds hereby authorized shall be paid into the general fund—capitol purchase and development account. [1969 ex.s. c 273 § 7; 1967 ex.s. c 105 § 8.]

79.24.640 Bonds as security and legal investment.

Bonds authorized by RCW 79.24.630 through 79.24.646, shall be accepted by the state, counties, cities, towns, school districts, and other political subdivisions as security for the deposit of any of their funds in any banking institution. Any officer of this state, or any county, city, town, school district, or other political subdivision may invest surplus funds, which he is authorized to invest in securities, and where such authorization is not limited or restricted as to the class of securities in which he may invest, in bonds issued under RCW 79.24.630 through 79.24.646. [1969 ex.s. c 273 § 8; 1967 ex.s. c 105 § 9.]

79.24.642 Use of bond proceeds. Proceeds of the bonds issued hereunder shall be expended by the state capitol committee for the purposes enumerated in this section.

The state capitol committee shall provide for the acquisition, development and improvement of lands, improvements and facilities within the east capitol site, as now described or as may be described by the legislature, as may be determined by the state capitol committee to be necessary for the current and prospective requisites of a state capitol in accordance with the provisions of RCW 79.24.500 through 79.24.590 and chapter 43.19 RCW, and to pay for all costs and expenses in issuing the bonds and to pay interest thereon during construction of the improvements and facilities for which the bonds were issued and six months thereafter. [1969 ex.s. c 273 § 9; 1967 ex.s. c 105 § 10.]

79.24.6421 Refunding revenue bonds authorized—Amount—Interest rate—Issue. The state capitol committee is hereby authorized to refund, at the maturity thereof, or before the maturity thereof if they are subject to call prior to maturity, or if all the holders thereof consent thereto, upon such terms and conditions as it shall deem just, any or all of its revenue bonds now or hereafter outstanding, issued pursuant to RCW 79.24.630 through 79.24.646, which revenue bonds are payable out of the state building bond redemption fund. Refunding revenue bonds may be issued hereunder in a sufficient amount to refund the

aforesaid outstanding revenue bonds and in addition to provide the balance of the four million dollars in bond proceeds authorized by RCW 79.24.630 for deposit into the general fund—capitol purchase and development account. Such refunding bonds shall bear interest at such rates and mature at such times, without limitation by the interest rates or maturity of the bonds being refunded, as the state capitol committee shall determine by resolution. Such refunding revenue bonds shall be issued in accordance with and be subject to the provisions of RCW 79.24.630 through 79.24.642. [1969 ex.s. c 273 § 1.]

79.24.6422 Refunding revenue bonds authorized—Refunding revenue bonds payable from state building bond redemption fund—Not state obligation. Such refunding revenue bonds shall be payable solely from the state building bond redemption fund created by RCW 79.24.638 from the moneys provided by law to be deposited therein. Such bonds shall not be general obligations of the state of Washington. [1969 ex.s. c 273 § 2.]

79.24.644 Appropriation. There is appropriated to the department of general administration from the general fund—capitol purchase and development account the sum of four million dollars or so much thereof as may be necessary to accomplish the purposes set forth in RCW 79.24.642. [1967 ex.s. c 105 § 11.]

79.24.645 Reappropriation—1969 ex.s. c 273. There is reappropriated to the department of general administration from the general fund—capitol purchase and development account the sum of four million dollars or so much thereof as may be necessary to accomplish the purposes set forth in RCW 79.24.642. [1969 ex.s. c 273 § 10.]

79.24.646 Severability—1967 ex.s. c 105. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 105 § 12.]

79.24.647 Severability—1969 ex.s. c 273. If any provision of this act, or its application to any person or circumstance, is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected. [1969 ex.s. c 273 § 13.]

Reviser's note: This applies to RCW 79.24.630 through 79.24.642, 79.24.645, 79.24.570 and 79.24.580.

STATE BUILDINGS AND PARKING
FACILITIES—1969 ACT

79.24.650 Committee duties enumerated. The state capitol committee shall provide for the construction, remodeling, and furnishing of capitol office buildings, parking facilities, *governor's mansion*, and such other buildings and facilities as are determined by the state capitol committee to be necessary to provide space for the legislature by way of offices, committee rooms,

hearing rooms, and work rooms, and to provide executive office space and housing for the governor, and to provide executive office space for other elective officials and such other state agencies as may be necessary, and to pay for all costs and expenses in issuing the bonds and to pay interest thereon during construction of the facilities for which the bonds were issued and six months thereafter. [1969 ex.s. c 272 § 1.]

79.24.652 Bonds authorized—Amount—Interest and maturity—Payable from certain revenues. In addition to any authority previously granted, the state capitol committee is authorized and directed to issue coupon or registered revenue bonds of the state in an amount not to exceed fifteen million dollars. The bonds may be sold in such manner and amounts, and in such denominations, at such times, at such price and shall bear interest at such rates and mature at such times as the state capitol committee shall determine by resolution. Both principal and interest shall be payable only from revenues hereafter received from leases and contracts of sale heretofore or hereafter made of lands, timber, and other products from the surface or beneath the surface of the lands granted to the state by the United States pursuant to the act of congress approved February 22, 1889, for capitol building purposes and from any parking revenues derived from state capitol parking facilities. [1969 ex.s. c 272 § 2.]

79.24.654 Maturities—Covenants—Section's provisions as contract with bond holders—Where payable. Bonds issued under RCW 79.24.650 through 79.24.668 shall mature at such time or times, and include such provisions for optional redemption, premiums, coverage, guarantees, and other covenants as in the opinion of the state capitol committee may be necessary. In issuing such bonds and including such provisions, the state capitol committee shall act for the state and all officers, departments and agencies thereof affected by such provisions, and the state and such other officers, departments and agencies shall adhere to and be bound by such covenants. As long as any of such bonds shall be outstanding, neither the state, nor any of its officers, departments, agencies or instrumentalities, shall divert any of the proceeds and revenues actually pledged to secure the payment of the bonds and interest thereon, and the provisions of this section shall restrict and limit the powers of the legislature of the state of Washington in respect to the matters herein mentioned as long as the bonds are outstanding and unpaid and shall constitute a contract to that effect for the benefit of the holders of all such bonds. The principal and interest of said bonds shall be payable at the office of the state treasurer, or at the office of the fiscal agent of the state in New York City at the option of the holder of any such bond or bonds. [1969 ex.s. c 272 § 3.]

79.24.656 Signatures—Registration. The bonds shall be signed by the governor and state treasurer under the seal of the state which may be printed or engraved in the border of such bonds. The signature of the governor may be a facsimile printed upon the bonds

and any coupons attached thereto shall be signed with the facsimile signature of said officials. Any of such bonds may be registered in the name of the holder upon presentation to the state treasurer, or at the fiscal agency of the state in New York City, as to principal alone, or as to both principal and interest, under such regulations as the treasurer may prescribe. [1969 ex.s. c 272 § 4.]

79.24.658 Payment of principal and interest—State building and parking bond redemption fund—Reserve—Owner's remedies—Disposition of proceeds of sale. For the purpose of paying the principal and interest of said bonds as the same shall become due, or as said bonds become callable at the option of the capitol committee, there is created a fund to be denominated the "state building and parking bond redemption fund". While any of said bonds remain outstanding and unpaid, it shall be the duty of the capitol committee on or before June 30th of each year to determine the amount that will be required for the redemption of bonds and the payment of interest during the next fiscal year, and certify said amount to the state treasurer in writing. The state treasurer shall forthwith and thereafter during that fiscal year and at least fifteen days prior to each interest and principal payment date deposit into the state building and parking bond redemption fund all receipts from any parking facilities and to the extent necessary from receipts from leases and contracts of sale heretofore or hereafter made of lands, timber, and other products from the surface or beneath the surface of the lands granted to the state by the United States pursuant to the act of congress until the amount certified to the treasurer by the capitol committee has accrued to the state building and parking bond redemption fund. Nothing in RCW 79.24.650 through 79.24.668 shall prohibit the use of such receipts from leases and contracts of sale for any other lawfully authorized purpose when not required for the redemption and payment of interest and meeting the covenant requirements of the bonds authorized herein.

In addition to certifying and providing for the annual amounts required to pay the principal and interest of said bonds, the capitol committee may, under such terms and conditions and at such times and in such amounts as may be found necessary to insure the sale of said bonds, provide for additional payments into the state building and parking bond redemption fund to be held as a reserve to secure the payment of the principal and interest of such bonds.

The owner and holder of any of said bonds or the trustee for any of said bonds may by mandamus or other appropriate proceeding require and compel the deposit and payment of funds as directed herein.

The proceeds from the sale of the bonds hereby authorized shall be paid into the general fund—state building construction account. [1969 ex.s. c 272 § 5.]

79.24.660 Bonds as security and legal investment. Bonds authorized by RCW 79.24.650 through 79.24.668 shall be accepted by the state, counties, cities, towns,

school districts, and other political subdivisions as security for the deposit of any of their funds in any banking institution. Any officer of this state, or any county, city, town, school district, or other political subdivision may invest surplus funds, which he is authorized to invest in securities, and where such authorization is not limited or restricted as to the class of securities in which he may invest, in bonds issued under RCW 79.24.650 through 79.24.668. [1969 ex.s. c 272 § 6.]

79.24.662 Use of bond proceeds. Proceeds of the bonds issued hereunder shall be expended by the state capitol committee for the purposes enumerated in RCW 79.24.650. [1969 ex.s. c 272 § 7.]

79.24.664 Appropriation. There is appropriated to the department of general administration from the general fund—state building construction account the sum of fifteen million dollars or so much thereof as may be necessary to accomplish the purposes set forth in RCW 79.24.650. [1969 ex.s. c 272 § 8.]

79.24.666 State capitol committee to act upon advice of legislative committee—State capitol committee powers. The state capitol committee shall perform the foregoing in accordance with law and after consultation with and advice of such committee of the senate and house of representatives as the legislature may appoint for this purpose. The state capitol committee shall have power to do all acts and things necessary or convenient to carry out the purposes of RCW 79.24.650 through 79.24.668 subject to and in accordance with the provisions of RCW 79.24.650 through 79.24.668 and chapters 43.19 and 79.24 RCW. [1969 ex.s. c 272 § 9.]

79.24.668 Severability—1969 ex.s. c 272. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected. [1969 ex.s. c 272 § 11.]

Chapter 79.28 LIEU LANDS

Sections

79.28.010	Agreements for selection authorized.
79.28.020	Examination and appraisal.
79.28.030	Transfer of title to lands relinquished.
79.28.040	Livestock grazing on lieu lands.
79.28.050	Grazing permits—Arrangements with United States government.
79.28.060	Grazing fees.
79.28.070	Improvement of grazing ranges—Agreements.
79.28.080	Improvement of grazing ranges—Extension of duration of permit—Reduction of fees.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see reviser's note following Title 79 RCW digest.

Granted lands: *Enabling Act §§ 10–12 and 15–19; state Constitution Art. 16.*

79.28.010 Agreements for selection authorized. For the purpose of obtaining from the United States indemnity or lieu lands for such lands granted to the state for

common schools, educational, penal, reformatory, charitable, capitol building or other purposes, as have been or may be lost to the state, or the title to or use or possession of which is claimed by the United States or by others claiming by, through or under the United States, by reason of any of the causes entitling the state to select other lands in lieu thereof, the inclusion of the same in any reservation by or under authority of the United States, or any other appropriation or disposition of the same by the United States, whether such lands are now surveyed or unsurveyed, the commissioner of public lands, with the advice and approval of the board of state land commissioners and the attorney general, is authorized and empowered to enter into an agreement or agreements, on behalf of the state, with the proper officer or officers of the United States for the relinquishment of any such lands and the selection in lieu thereof, under the provisions of RCW 79.28.010 through 79.28.030, of lands of the United States of equal area and value. [1913 c 102 § 1; RRS § 7824.]

79.28.020 Examination and appraisal. Upon the making of any such agreement, the board of state land commissioners shall be empowered and it shall be their duty to cause such examination and appraisal to be made as will determine the area and value, as nearly as may be, of the lands lost to the state, or the title to, use or possession of which is claimed by the United States by reason of the causes mentioned in RCW 79.28.010, and proposed to be relinquished to the United States, and shall cause an examination and appraisal to be made of any lands which may be designated by the officers of the United States as subject to selection by the state in lieu of the lands aforesaid, to the end that the state shall obtain lands in lieu thereof of equal area and value. [1913 c 102 § 2; RRS § 7825.]

79.28.030 Transfer of title to lands relinquished. Whenever the title to any lands selected under the provisions of RCW 79.28.010 through 79.28.030 shall become vested in the state of Washington by the acceptance and approval of the lists of lands so selected, or other proper action of the United States, the governor, on behalf of the state of Washington, shall execute and deliver to the United States a deed of conveyance of the lands of the state relinquished under the provisions of RCW 79.28.010 through 79.28.030, which deed shall convey to and vest in the United States all the right, title and interest of the state of Washington therein. [1913 c 102 § 3; RRS § 7826.]

79.28.040 Livestock grazing on lieu lands. The commissioner of public lands shall have the power, and it shall be his duty, to adopt and promulgate, from time to time, reasonable rules and regulations for the grazing of livestock on such tracts and areas of the indemnity or lieu public lands of the state contiguous to national forests and suitable for grazing purposes, as have been, or shall be, obtained from the United States under the provisions of RCW 79.28.010. [1923 c 85 § 1; RRS § 7826–1.]

79.28.050 Grazing permits—Arrangements with United States government. The commissioner of public lands shall have the power to issue permits for the grazing of livestock on the lands described in RCW 79.28.040 in such manner and upon such terms, as near as may be, as permits are, or shall be, issued by the United States for the grazing of livestock on national forest reserve lands and for such fees as he shall deem adequate and advisable, and shall have the power to enter into such arrangements as may be deemed advisable and to cooperate with the officers of the United States having charge of the grazing of livestock on forest reserve lands for the protection and preservation of the grazing areas on the state lands contiguous to national forests and for the administration of the provisions of RCW 79.28.040 through 79.28.060. [1923 c 85 § 2; RRS § 7826-2.]

Grazing on game lands: RCW 77.12.410.

79.28.060 Grazing fees. All fees collected under the provisions of RCW 79.28.040 through 79.28.060 shall be paid over to the state treasurer and deposited in the state treasury to the credit of the current fund of the grant of which the lands from which such fees are collected, form a part. [1923 c 85 § 3; RRS § 7826-3.]

79.28.070 Improvement of grazing ranges—Agreements. The department of natural resources is hereby authorized on behalf of the state of Washington to enter into cooperative agreements with any person as defined in RCW 1.16.080 for the improvement of the state's grazing ranges by the clearing of debris, maintenance of trails and water holes and other requirements for the general improvement of the grazing ranges. [1963 c 99 § 1; 1955 c 324 § 1.]

79.28.080 Improvement of grazing ranges—Extension of duration of permit—Reduction of fees. In order to encourage the improvement of grazing ranges by holders of grazing permits, the land commissioner shall consider (1) extension of grazing permit periods to a maximum of five years, and (2) reduction of grazing fees, in situations where the permittee contributes or agrees to contribute to the improvement of the range, financially, by labor, or otherwise. [1955 c 324 § 2.]

Chapter 79.36

EASEMENTS OVER PUBLIC LANDS

Sections

- 79.36.230 Easement reserved in later grants for removal of materials, etc.
- 79.36.240 Private easement over state lands subject to common user.
- 79.36.250 Easement over public lands subject to common user.
- 79.36.260 Reservations in grants and leases.
- 79.36.270 Duty of utilities and transportation commission.
- 79.36.280 Penalty for violating utilities and transportation commission's order.
- 79.36.290 Applications—Appraisal—Certificate—Forfeiture—Fee.
- 79.36.300 Access to state timber.

Access to state timber: Chapter 76.16 RCW.

Diking district right of way: RCW 85.05.080.

Flood control district right of way: Chapters 86.05 and 86.09 RCW.

Reclamation district right of way: RCW 89.30.223.

79.36.230 Easement reserved in later grants for removal of materials, etc. All state lands hereafter granted, sold or leased shall be subject to the right of the state, or any grantee or lessee or successor in interest thereof hereafter acquiring other state lands, or acquiring the timber, stone, mineral or other natural products thereon, or the manufactured products thereof to acquire the right of way over such lands so granted, for logging and/or lumbering railroads, private railroads, skid roads, flumes, canals, watercourses, or other easements for the purpose of and to be used in the transporting and moving of such timber, stone, mineral or other natural products thereon, and the manufactured products thereof from such state land, and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products over and across the lands so granted or leased, upon the state or its grantee or successor in interest thereof, paying to the owner of the lands so granted, sold, or leased reasonable compensation therefor. In case the parties interested cannot agree upon the damages incurred, the same shall be ascertained and assessed in the same manner as damages are ascertained and assessed against a railroad seeking to condemn private property. [1927 c 312 § 1; RRS § 8107-1. Prior: 1911 c 109 § 1.]

Severability—1927 c 312: "If any section, subdivision, sentence or clause in this act shall be held invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional." [1927 c 312 § 8.] This applies to RCW 79.36.230 through 79.36.290.

Earlier enactment, see RCW 79.01.312.

Railroads, eminent domain: RCW 81.36.010 and 81.53.180.

79.36.240 Private easement over state lands subject to common user. Every grant, deed, conveyance, lease or contract hereafter made to any person, firm or corporation over and across any state lands for the purpose of right of way for any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement to be used in the hauling of timber, stone, mineral or other natural products of the land and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products, shall be subject to the right of the state, or any grantee or successor in interest thereof, owning or hereafter acquiring from the state any timber, stone, mineral, or other natural products, or any state lands containing valuable timber, stone, mineral or other natural products of the land, of having such timber, stone, mineral or other natural products, and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products transported or moved over such railroad, skid road, flume, canal, watercourse or other easement, after the same is or has been put in operation, upon paying therefor just and reasonable rates for transportation or for the use of such railroad,

skid road, flume, canal, watercourse or other easement, and upon complying with just, reasonable and proper rules affecting such transportation, which rates, rules and regulations shall be under the supervision and control of the director of public works of the state of Washington. [1927 c 312 § 2; RRS § 8107-2. Prior: 1911 c 109 § 2.]

Reviser's note: "director of public works", see note following RCW 79.01.316.

Earlier enactment, see RCW 79.01.316.

79.36.250 Easement over public lands subject to common user. Any person, firm or corporation hereafter acquiring the right of way or other easement over state lands or over any tide or shore lands belonging to the state, or over and across any navigable water or stream for the purpose of transporting or moving timber, stone, mineral, or other natural products of the lands, and the manufactured products thereof and engaged in such business thereon, shall accord to the state or any grantee or successor in interest thereof hereafter acquiring state lands containing valuable timber, stone, mineral or other natural products of the land, or any person, firm or corporation hereafter acquiring the timber, stone, mineral or other natural products situate upon state lands, or the manufactured products thereof proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such timber, stone, mineral and other natural products of the land, and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products under reasonable rules and regulations upon payment of just and reasonable charges therefor, or, if such right of way or other easement is not then in use to have the right to use such right of way or easement for transporting and moving such products under such reasonable rules and regulations and upon payment of just and reasonable charges therefor. [1927 c 312 § 3; RRS § 8107-3. Prior: 1911 c 109 § 3.]

Earlier enactment, see RCW 79.01.320.

79.36.260 Reservations in grants and leases. Whenever any person, firm or corporation shall hereafter purchase, lease or acquire any state lands, or any easement or interest therein, or any timber, stone, mineral or other natural products thereon, or the manufactured products thereof the purchase, lease or grant shall be subject to the condition or reservation that such person, firm or corporation, or their successors in interest, shall, whenever any of the timber, stone, mineral or other natural products on said lands or the manufactured products thereof are removed, by any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement, owned, leased or operated by such person, firm or corporation, or their successors in interest, accord to any other person, firm or corporation, or their successors in interest, having the right to remove any timber, stone, mineral, or other natural products or the manufactured products thereof from any other lands, owned or formerly owned by the

state, proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such other timber, stone, mineral and other natural products, and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting[,] manufacturing, mining or quarrying any or all of such products under reasonable rules and regulations and upon payment of just and reasonable charges therefor; and that any conveyance, lease or mortgage of such logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement, shall be subject to the right of the person, firm or corporation, or their successors in interest, having the right to remove timber, stone, mineral or other natural products or the manufactured products thereof from such other state lands, to be accorded such proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such other timber, stone, mineral and other natural products and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products under reasonable rules, regulations and upon payment of just and reasonable charges therefor; and such purchase, lease or grant from the state shall also be subject to the condition or reservation that whenever any of the timber, stone, mineral or other natural products on such lands or the manufactured products thereof are about to be removed, by means of any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement, not owned, controlled, or operated by the person, firm or corporation owning or having the right to remove, and about to remove such timber, stone, mineral or other natural products or the manufactured products thereof shall exact and require from the owners and operators of such logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement, which shall be binding upon the successors in interest of such owners and operators, an agreement and promise, as a part of the contract for removal, and by virtue of RCW 79.36.230 through 79.36.290 there shall be deemed to be a part of any such express or implied contract for removal, an agreement, and promise that such owners and operators, and their successors in interest, shall accord to any person, firm or corporation and their successors in interest, having the right to remove any timber, stone, mineral or other natural products or the manufactured products thereof from any lands, owned, or formerly owned by the state, proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such timber, stone, mineral and other natural products and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products and under reasonable rules and regulations and upon payment of just and reasonable charges therefor. [1927 c 312 § 4; RRS § 8107-4.]

79.36.270 Duty of utilities and transportation commission. Should the owner or operator of any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement operating over lands hereafter acquired from the state, as in RCW 79.36.230 through 79.36.290 set out, fail to agree with the state or with any subsequent grantee or successor in interest thereof as to the reasonable and proper rules, regulations and charges concerning the transportation of timber, stone, mineral or other natural products of the land, or the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products for carrying and transporting such products or for the use of the railroad, skid road, flume, canal, watercourse or other easement in transporting such products, the state or such person, firm or corporation owning and desiring to ship such products may apply to the director of public works and have the reasonableness of the rules, regulations and charges inquired into and it shall be the duty of the director of public works to inquire into the same in the same manner, and he is hereby given the same power and authority to investigate the same as he is now authorized to investigate and inquire into the rules and regulations and charges made by railroads and is authorized and empowered to make such order as he would make in an inquiry against a railroad, and in case such logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement is not then in use, may make such reasonable, proper and just rules and regulations concerning the use thereof for the purposes aforesaid as may be just and proper and such order shall have the same force and effect and shall be binding upon the parties to such hearing as though such hearing and order was made affecting a railroad. [1927 c 312 § 5; RRS § 8107-5. Prior: 1911 c 109 § 4.]

Reviser's note: "director of public works", see note following RCW 79.01.316.

Earlier enactment, see RCW 79.01.324.

Washington utilities and transportation commission: Chapter 80.01 RCW.

79.36.280 Penalty for violating utilities and transportation commission's order. In case any person, firm or corporation owning and/or operating any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement subject to the provisions of RCW 79.36.230 through 79.36.290 shall fail to comply with any rule, regulation or order made by the director of public works, after an inquiry as provided for in RCW 79.36.270, each person, firm or corporation shall be subject to a penalty not exceeding one thousand dollars, and in addition thereto, the right of way over state lands theretofore granted to such person, firm or corporation, and all improvements and structures on such right of way and connected therewith, shall revert to the state of Washington, and may be recovered by it in an action instituted in any court of competent jurisdiction, unless such state lands have

been sold. [1927 c 312 § 7; RRS § 8107-7. Prior: 1911 c 109 § 5.]

Reviser's note: "director of public works", see note following RCW 79.01.316.

Earlier enactment, see RCW 79.01.328.

79.36.290 Applications—Appraisal—Certificate—Forfeiture—Fee. Any person, firm or corporation shall have a right of way over public lands, subject to the provisions of RCW 79.36.230 through 79.36.290, when necessary, for the purpose of hauling or removing timber, stone, mineral, or other natural products or the manufactured products thereof of the land. Before, however, any such right of way grant shall become effective, a written application for and a plat showing the location of such right of way, with reference to the adjoining lands, shall be filed with the state land commissioner, and all timber on said right of way, together with the damages to said land, shall be appraised and paid for in cash by the person, firm or corporation applying for such right of way. The state land commissioner shall then cause to be issued in duplicate to such person, firm or corporation a right of way certificate setting forth the conditions and terms upon which such right of way is granted. Whenever said right of way shall cease to be used, for a period of two years, for the purpose for which it was granted, it shall be deemed forfeited, and said right of way certificate shall contain such a provision: *Provided*, That any right of way for logging purposes heretofore issued which has never been used, or has ceased to be used, for a period of two years, for the purpose of which it was granted, shall be deemed forfeited and shall be canceled upon the records in the office of the commissioner of public lands. One copy of each certificate shall be filed in the office of the commissioner of public lands and one copy delivered to the applicant. The forfeiture of said right of way, as herein provided, shall be rendered effective by the mailing of notice of such forfeiture to the grantee thereof to his last known post office address and by stamping the copy of said certificate in the office of the commissioner of public lands canceled and the date of such cancellation. For the issuance of such certificate the same fee shall be charged as provided in the case of certificates for railroad rights of way. [1927 c 312 § 6; RRS § 8107-6. Prior: 1921 c 55 § 1; 1915 c 147 § 12; 1897 c 89 § 34; 1895 c 178 § 45.]

Earlier enactment: See RCW 79.01.332 and 79.01.336.

Certificates for railroad rights of way: RCW 79.01.364.

Fees, generally: RCW 79.01.720.

79.36.300 Access to state timber. See chapter 76.16 RCW.

Chapter 79.38 ACCESS ROADS

Sections	
79.38.010	Acquisition of property for access to public or state forest lands from public highway.
79.38.020	Exchange of rights to cross land—Agreements—Disposal of interest in access road.

- 79.38.030 Use of roads by purchasers of valuable materials—
Terms—Charges.
- 79.38.040 Permits for use of roads—Regulations.
- 79.38.050 Access road revolving fund—Composition—Use.
- 79.38.060 Use of moneys not deposited in revolving fund.
- 79.38.900 Severability—1961 c 44.

79.38.010 Acquisition of property for access to public or state forest lands from public highway. In addition to any authority otherwise granted by law, the department of natural resources shall have the authority to acquire lands, interests in lands, and other property for the purpose of affording access by road to public lands or state forest lands from any public highway. [1961 c 44 § 1.]

79.38.020 Exchange of rights to cross land—Agreements—Disposal of interest in access road. To facilitate the carrying out of the purpose of this chapter, the department of natural resources may:

(1) Grant easements, rights of way, and permits to cross public lands and state forest lands to any person in exchange for similar rights over lands not under its jurisdiction;

(2) Enter into agreements with any person relating to purchase, construction, reconstruction, maintenance, repair, regulation, and use of access roads;

(3) Dispose, by sale, exchange, or otherwise, of any interest in an access road in the event it determines such interest is no longer necessary for the purposes of this chapter. [1961 c 44 § 2.]

79.38.030 Use of roads by purchasers of valuable materials—Terms—Charges. Purchasers of valuable materials from public lands or state forest lands may use access roads for the removal of such materials where the rights acquired by the state will permit, but use shall be subject to the right of the department of natural resources:

(1) To impose reasonable terms for the use, construction, reconstruction, maintenance, and repair of such access roads; and

(2) To impose reasonable charges for the use of such access roads. [1961 c 44 § 3.]

79.38.040 Permits for use of roads—Regulations. Whenever the department of natural resources finds that it is for the best interest of the state and where the rights acquired by the state will permit, the department may grant permits for the use of access roads to any person. Any permit issued under the authority of this section shall be subject to reasonable regulation by the department. Such regulation shall include, but is not limited to, the following matters:

(1) Requirements for construction, reconstruction, maintenance, and repair;

(2) Limitations as to extent and time of use;

(3) Provision for revocation at the discretion of the department; and

(4) Charges for use. [1961 c 44 § 4.]

79.38.050 Access road revolving fund—Composition—Use. The department of natural resources shall create, maintain, and administer a revolving fund, to be

known as the access road revolving fund in which shall be deposited all moneys received by it from users of access roads as payment for costs incurred or to be incurred in maintaining, repairing, and reconstructing access roads. The department may use moneys in the fund for the purposes for which they were obtained without appropriation by the legislature. [1961 c 44 § 5.]

79.38.060 Use of moneys not deposited in revolving fund. All moneys received by the department of natural resources from users of access roads which are not deposited in the access road revolving fund shall be paid as follows:

(1) To reimburse the state fund or account from which expenditures have been made for the acquisition and construction of the access road, and upon full reimbursement, then

(2) To the funds or accounts for which the public lands and state forest lands, to which access is provided, are pledged by law or constitutional provision, in which case the department of natural resources shall make an equitable apportionment between funds and accounts so that no fund or account shall benefit at the expense of another. [1961 c 44 § 6.]

79.38.900 Severability—1961 c 44. If any provisions of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1961 c 44 § 7.]

Chapter 79.40 TRESPASS

Sections

- 79.40.050 Trespass by cattle, horses, sheep, or goats.
79.40.060 Trespass by cattle, horses, sheep, or goats—Penalty.
79.40.070 Cutting, breaking, removing Christmas trees—
Compensation.
79.40.080 Construction—1937 c 87.
79.40.090 Firewood on state lands.

Penalty for destroying rhododendron and other native flora on state lands: RCW 47.40.080.

Trespass: Chapters 9.83, 64.12 RCW.

79.40.050 Trespass by cattle, horses, sheep, or goats. It shall be unlawful for the owner of any cattle, horses, sheep, or goats, to permit the same to enter upon land or lands, composed of a single contiguous area exceeding seven hundred acres, owned by the state of Washington in fee simple, in trust or otherwise, where said lands have been obtained by the state through grant, purchase, gift or operation of law, and regardless of the department of state government under which said lands are controlled. [1959 c 257 § 47; 1937 c 165 § 1; RRS § 7797–200a.]

Horses, mules, and asses at large: Chapter 16.13 RCW.

79.40.060 Trespass by cattle, horses, sheep, or goats—Penalty. Any person violating RCW 79.40.050 shall be guilty of a misdemeanor. [1937 c 165 § 2; RRS § 7797–200b.]

79.40.070 Cutting, breaking, removing Christmas trees—Compensation. It shall be unlawful for any person to enter upon any of the state lands, including all land under the jurisdiction of the state forest board, or upon any private land without the permission of the owner thereof and to cut, break or remove therefrom for commercial purposes any evergreen trees, commonly known as Christmas trees, including fir, hemlock, spruce, and pine trees. Any person cutting, breaking or removing or causing to be cut, broken or removed, or who cuts down, cuts off, breaks, tops, or destroys any of such Christmas trees shall be liable to the state, or to the private owner thereof, for payment for such trees at a price of one dollar each if payment is made immediately upon demand. Should it be necessary to institute civil action to recover the value of such trees, the state in the case of state lands, or the owner in case of private lands, may exact treble damages on the basis of three dollars per tree for each tree so cut or removed. [1955 c 225 § 1; 1937 c 87 § 1; RRS § 8074-1.]

Reviser's note: The powers and duties of the "state forest board" have been transferred to the department of natural resources, see reviser's note following Title 79 RCW digest.

Christmas tree exporting: Chapter 19.12 RCW.

Forests and forest products: Title 76 RCW.

79.40.080 Construction—1937 c 87. RCW 79.40.070 is not intended to repeal or modify any of the provisions of existing statutes providing penalties for the unlawful removal of timber from state lands. [1937 c 87 § 2; RRS § 8074-2.]

79.40.090 Firewood on state lands. See chapter 76.20 RCW.

Chapter 79.44

ASSESSMENTS AGAINST PUBLIC LANDS

Sections

79.44.003	"Assessing district" defined.
79.44.010	Public lands subject to local assessments.
79.44.020	State to be charged its proportion of cost—Construction of chapter.
79.44.030	Apportioning cost on leaseholds.
79.44.040	Notice to state of intention to improve—Consent—Notice to port commission.
79.44.050	Certification of roll—Penalties, interest.
79.44.060	Payment procedure—State lands not subject to lien, exception.
79.44.070	Enforcement against lessee or contract holder.
79.44.080	Foreclosure against leasehold or contract interest—Cancellation of lease or contract.
79.44.090	Payment by state after forfeiture of lease or contract.
79.44.095	Assessments paid by state to be added to purchase price of land.
79.44.100	Assignment of lease or contract to purchaser at foreclosure sale.
79.44.120	When assessments need not be added in certain cases.
79.44.130	Local provisions superseded.
79.44.140	Application of chapter—Eminent domain assessments.
79.44.180	Director of budget to adopt rules and regulations.
79.44.190	Acquisition of property by state or political subdivision which is subject to unpaid assessments or delinquencies—Payment of lien or installments.
79.44.900	Severability—1963 c 20.

Reviser's note: The powers and duties of the commissioner of public lands mentioned in this chapter have devolved upon the department of natural resources, see reviser's note following Title 79 RCW digest.

Diking, drainage and sewerage improvement district assessments: RCW 85.08.370.

Diking district assessments: RCW 85.05.390.

Drainage district assessments: RCW 85.05.390.

Flood control district assessments: RCW 86.09.523, 86.09.526, 86.09.529.

Intercounty diking and drainage district assessments: RCW 85.24.275.

Irrigation district assessments: RCW 87.03.025.

79.44.003 "Assessing district" defined. As used in this chapter "assessing district" means:

- (1) Incorporated cities and towns;
- (2) Diking districts;
- (3) Drainage districts;
- (4) Port districts;
- (5) Irrigation districts;
- (6) Water districts;
- (7) Sewer districts;
- (8) Counties; and

(9) Any municipal corporation or public agency having power to levy local improvement or other assessments which by statute are expressly made applicable to lands of the state. [1971 ex.s. c 234 § 14; 1963 c 20 § 1.]

79.44.010 Public lands subject to local assessments. All lands, including school lands, granted lands, escheated lands, tidelands, shorelands, or other lands, (including harbor areas lying between tide or shore lands and outer harbor line) held or owned by the state of Washington in fee simple (in trust or otherwise), situated within the limits of any assessing district in this state, may be assessed and charged for the cost of local or other improvements specially benefiting such lands which may be ordered by the proper authorities of any such assessing district and may be assessed by any irrigation district to the same extent as private lands within the district are assessed: *Provided*, That the leasehold, contractual or possessory interest of any person, firm, association, private or municipal corporation in any such lands shall be charged and assessed in the proportional amount such leasehold, contractual or possessory interest is benefited: *Provided, further*, That no lands of the state shall be included within an irrigation district except as provided in RCW 87.03.025 and 89.12.090. [1963 c 20 § 2; 1919 c 164 § 1; RRS § 8125. Cf. 1909 c 154 §§ 1, 4.]

79.44.020 State to be charged its proportion of cost—Construction of chapter. In all local improvement assessment districts in any assessing district in this state, property in such district, held or owned by the state shall be assessed and charged for its proportion of the cost of such local improvements in the same manner as other property in such district, it being the intention of this chapter that the state shall bear its just and equitable proportion of the cost of local improvements specially benefiting state lands: *Provided*, That none of the provisions of this chapter shall have the effect, or be construed to have the effect, to alter or modify in any particular any existing lease of any lands or property

owned by the state, or release or discharge any lessee of any such lands or property from any of the obligations, covenants or conditions of the contract under which any such lands or property are leased or held by any such lessee. [1963 c 20 § 3; 1919 c 164 § 2; RRS § 8126. Cf. 1909 c 154 § 5.]

79.44.030 Apportioning cost on leaseholds. Where state lands are under lease, the proportionate amounts to be assessed against the leasehold interest, and the fee simple interest of the state, shall be fixed with reference to the life of the improvement and the period for which said lease has yet to run. [1919 c 164 § 3; RRS § 8127. Cf. 1909 c 154 § 3; 1907 c 74 § 3.]

79.44.040 Notice to state of intention to improve—Consent—Notice to port commission. Notice of the intention to make such improvement, together with the estimate of the amount to be charged to each lot, tract or parcel of land, or other property owned by the state to be assessed for said improvement, shall be forwarded by registered or certified mail to the budget director and to the chief administrative officer of the agency of state government occupying, using, or having jurisdiction over such lands at least thirty days prior to the date fixed for hearing on the resolution or petition initiating said improvement. Such assessing district, shall not have jurisdiction to order such improvement as to the interest of the state in harbor areas and state tidelands until the written consent of the commissioner of public lands to the making of such improvement shall have been obtained, unless other means be provided for paying that portion of the cost which would otherwise be levied on the interest of the state of Washington in and to said tidelands, and nothing herein shall prevent the city from assessing the proportionate cost of said improvement against any leasehold, contractual or possessory interest in and to any tideland or harbor area owned by the state: *Provided, however,* That in the case of tidelands and harbor areas within the boundaries of any port district, notice of intention to make such improvement shall also be forwarded to the commissioners of said port district. [1963 c 20 § 4; 1919 c 164 § 4; RRS § 8128. Cf. 1909 c 154 § 6.]

79.44.050 Certification of roll—Penalties, interest. Upon the approval and confirmation of the assessment roll for any local improvement ordered by the proper authorities of any assessing district, the treasurer of such assessing district shall certify and forward to the budget director and to the chief administrative officer of the agency of state government occupying, using, or having jurisdiction over the lands, in accordance with such rules and regulations as the budget director may provide, a statement of all the lots or parcels of land held or owned by the state and charged on such assessment roll for the cost of such improvement, separately describing each such lot or parcel of the state's land, with the amount of the local assessment charged against it, or the proportionate amount assessed against the fee simple interest of the state, in case said land has been leased. The chief administrative officer upon receipt of

such statement shall cause a proper record to be made in his office of the cost of such improvement upon the lands occupied, used, or under the jurisdiction of his agency.

No penalty shall be provided or enforced against the state, and the interest upon such assessments shall be computed and paid at the rate paid by other property situated in the same improvement district. [1963 c 20 § 5; 1933 c 108 § 1; 1919 c 164 § 5; RRS § 8129. Cf. 1909 c 154 § 6; 1907 c 74 §§ 1, 2, 4, 5.]

79.44.060 Payment procedure—State lands not subject to lien, exception. When the chief administrative officer of an agency of state government is satisfied that an assessing district has complied with all the conditions precedent to the levy of assessments for district purposes, pursuant to this chapter against state lands occupied, used, or under the jurisdiction of his agency, he shall pay them, together with any interest thereon from any funds specifically appropriated to his agency therefor or from any funds of his agency which under existing law have been or are required to be expended to pay assessments on a current basis. In all other cases, the chief administrative officer shall certify to the budget director that the assessment is one properly chargeable to the state. The budget director shall pay such assessments from funds available or appropriated to him for this purpose.

Except as provided in RCW 79.44.190 no lands of the state shall be subject to a lien for unpaid assessments, nor shall the interest of the state in any land be sold for unpaid assessments where assessment liens attached to the lands prior to state ownership. [1971 ex.s. c 116 § 2; 1963 c 20 § 6; 1947 c 205 § 1; Rem. Supp. 1947 § 8136a.]

79.44.070 Enforcement against lessee or contract holder. When any assessing district has made or caused to be made an assessment against such leasehold, contractual or possessory interest for any such local improvement, the treasurer of said assessing district shall immediately give notice to the budget director and to the chief administrative officer of the agency having jurisdiction over the lands. Said assessment shall become a lien against the leasehold, contractual or possessory interest in the same manner as the assessments on other property, and its collection may be enforced against such interests as provided by law for the enforcement of other local improvement assessments: *Provided,* That said assessment shall not be made payable in installments unless the owner of such leasehold, contractual or possessory interest shall first file with such treasurer a satisfactory bond guaranteeing the payment of such installments as they become due. [1963 c 20 § 7; 1919 c 164 § 6; RRS § 8130. Cf. 1909 c 154 § 2.]

79.44.080 Foreclosure against leasehold or contract interest—Cancellation of lease or contract. Whenever any assessing district shall have foreclosed the lien of any such delinquent assessments, as provided by law, and shall have obtained title to such leasehold, contractual or possessory interest, the budget director and the

chief administrative officer of the agency having jurisdiction over the lands shall be notified by registered or certified mail of such action and furnished a statement of all assessments against such leasehold, contractual or possessory interest, and the chief administrative officer or budget director shall cause the amount of such assessments to be paid as provided in RCW 79.44.060, and upon the receipt of an assignment from such assessing district, the chief administrative officer shall cancel such lease or contract: *Provided, however,* That unless the assessing district making said local improvement and levying said special assessment shall have used due diligence in the foreclosure thereof, the chief administrative officer and the budget director shall not be required to pay any sum in excess of what they deem to be the special benefits accruing to the state's reversionary interest in said property: *And provided further,* That if such delinquent assessment or installment shall be against a leasehold interest in fresh water harbor areas within a port district, the chief administrative officer shall notify the commissioners of said port district of the receipt of such assignment, and said commissioners shall forthwith cancel such lease. [1963 c 20 § 8; 1919 c 164 § 7; RRS § 8131.]

79.44.090 Payment by state after forfeiture of lease or contract. If by reason of default in the payment of rentals or installments, or other causes, the state shall cancel any lease or contract against which assessments have been levied as herein provided, the chief administrative officer of the agency having jurisdiction over the lands shall cause such assessments or installments as shall fall due subsequent to the cancellation of said contract or leasehold interest to be paid as provided in RCW 79.44.060, the same as if the assessments or installments thereof had been levied on the state's interest in said lands. [1963 c 20 § 9; 1919 c 164 § 8; RRS § 8132.]

79.44.095 Assessments paid by state to be added to purchase price of land. When any land, other than lands occupied and used in connection with state institutions, owned or held by the state within incorporated cities, towns, diking, drainage or port districts in this state, against which local improvement assessments have been paid, as herein provided for, is offered for sale, there shall be added to the appraised value of such land, as provided by law, such portion of the local improvement assessment paid by the state as shall be deemed to represent the value added to such lands by such improvement for the purpose of sale, which amount so added shall be paid by the purchaser in cash at the time of the sale of said land, in addition to the amounts otherwise due to the state for said land, and no deed shall ever be executed until such local improvement assessments have been paid, and nothing herein shall be construed as canceling any unpaid assessments on the land so sold by the state, but such land shall be sold subject to all assessments unpaid at the time of sale. [1919 c 164 § 9; RRS § 8133. Cf. 1909 c 154 § 7.]

Assessments paid to be added to purchase price of land: RCW 79.01.728.

79.44.100 Assignment of lease or contract to purchaser at foreclosure sale. Whenever any such tide, state, school, granted or other lands situated within the limits of any assessing district, has been included within any local improvement district by such assessing district, and the contract, leasehold or other interest of any individual has been sold to satisfy the lien of such assessment for local improvement, the purchaser of such interest at such sale shall be entitled to receive from the state of Washington, on demand, an assignment of the contract, leasehold or other interest purchased by him, and shall assume, subject to the terms and conditions of the contract or lease, the payment to the state of the amount of the balance which his predecessor in interest was obligated to pay. [1963 c 20 § 10; 1919 c 164 § 10; RRS § 8134. Cf. 1909 c 154 § 10.]

79.44.120 When assessments need not be added in certain cases. Whenever any state school, granted, tide or other public lands of the state shall have been charged with local improvement assessments under any local improvement assessment district in any incorporated city, town, irrigation, diking, drainage, port, weed or pest district, or any other district now authorized by law to levy assessments against state lands, where such assessments are required under existing statutes to be returned to the fund of the state treasury from which said assessments were originally paid, the commissioner of public lands may, and he is hereby authorized, to sell such lands for their appraised valuation without regard to such assessments, anything to the contrary in the existing statutes notwithstanding: *Provided,* That nothing herein contained shall be construed to alter in any way any existing statute providing for the method of procedure in levying assessments against state lands in any of such local improvement assessment districts. [1937 c 80 § 1; RRS § 7797-192a.]

79.44.130 Local provisions superseded. The provisions of this chapter shall apply to all assessing districts as herein defined, any charter or ordinance provisions to the contrary notwithstanding. [1963 c 20 § 11; 1919 c 164 § 11; RRS § 8135. Cf. 1909 c 154 § 8.]

79.44.140 Application of chapter—Eminent domain assessments. The provisions of this chapter shall apply to all local improvements initiated after June 11, 1919, including assessments to pay the cost and expense of taking and damaging property by the power of eminent domain, as provided by law: *Provided,* That in case of eminent domain assessments, it shall not be necessary to forward notice of the intention to make such improvement, but the eminent domain commissioners, authorized to make such assessment, shall, at the time of filing the assessment roll with the court in the manner provided by law, forward by registered or certified mail to the budget director and to the chief administrative officer of the agency using, occupying or having jurisdiction over the lands a notice of such assessment, and of the day fixed by the court for the hearing thereof: *Provided,* That no assessment against the state's interest in tidelands or harbor areas shall be binding against the

state if the commissioner of public lands shall file a disapproval of the same in court before judgment confirming the roll. [1963 c 20 § 12; 1919 c 164 § 12; RRS § 8136.]

79.44.180 Director of budget to adopt rules and regulations. The budget director shall adopt rules and regulations:

(1) Governing the preparation, certification, and submission of all notices and statements required by chapter 79.44 RCW as now or hereafter amended;

(2) Authorizing and prescribing additional reports, records, and information necessary to achieve budgetary objectives in accordance with chapter 43.88 RCW and any appropriation hereafter made;

(3) Assuring the payment of all assessments properly chargeable to the state; and

(4) Protecting the state against illegal or inequitable assessments. [1963 c 20 § 14.]

79.44.190 Acquisition of property by state or political subdivision which is subject to unpaid assessments or delinquencies—Payment of lien or installments. When real property subject to an unpaid special assessment for a local improvement levied by any political subdivision of the state authorized to form local improvement or utility local improvement districts is acquired by purchase or condemnation by the state or any political subdivision thereof, including but not limited to any special purpose district, the property so acquired shall continue to be subject to the assessment lien.

An assessment lien or installment thereof, delinquent at the time of such acquisition shall be paid at the time of acquisition, and the amount thereof, including any accrued interest and delinquent penalties, shall be withheld from the purchase price or condemnation award by the public body acquiring the property and shall be paid immediately to the county, city, or town treasurer, whichever is applicable, in payment of and discharge of such delinquent installment lien.

Any installment or installments not delinquent at the time of acquisition shall become due and payable in such year and at such date as said installment would have become due if such property had not been so acquired: *Provided*, That where such property is acquired by the state of Washington, the balance of the assessment shall be paid in full at the time of acquisition.

For the purpose of this section, the "time of acquisition" shall mean the date of completion of the sale, date of condemnation verdict, date of the order of immediate possession and use pursuant to RCW 8.04.090, or the date of judgment, if not tried to a jury. [1971 ex.s. c 116 § 1.]

79.44.900 Severability—1963 c 20. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1963 c 20 § 16.]

Chapter 79.48 RECLAMATION OF ARID LANDS UNDER CAREY ACT

Sections

79.48.010	Acceptance of grant.
79.48.020	Acceptance of condition.
79.48.030	Department to administer.
79.48.040	Request for selection.
79.48.050	Monetary guarantee of performance.
79.48.060	Examination and approval of request.
79.48.070	List to be filed requesting withdrawal of lands.
79.48.080	Contract to be entered into—Terms—Performance bond.
79.48.090	Life of contract—Time of commencement of work, etc.
79.48.100	Procedure on default of contractor—Receivership.
79.48.110	State not liable for work done or contractor's default.
79.48.120	Notice that land is open to settlement.
79.48.130	Application for entry—Certificate of location—Minimum price.
79.48.140	Disposition of funds.
79.48.150	Contract of purchase—Payments—Cultivation requirements—Final proof—Patent.
79.48.160	Issuance of patent.
79.48.170	Water right—Lien for water payments—Foreclosure.
79.48.180	Map of works—Right of way for canals, etc.
79.48.190	Rules for filing—Annual report of irrigation companies.
79.48.200	Fees.
79.48.210	Annual report.
79.48.220	Water rights extended to state lands.
79.48.230	Reimbursement of state.
79.48.240	Actions to be in name of state.

Reviser's note: The powers and duties of the commissioner of public lands mentioned in this chapter have devolved upon the the department of natural resources, see reviser's note following Title 79 RCW digest.

Reviser's note: Throughout chapter 79.48 RCW references to "this act" have been translated to read "this chapter".

Department of water resources: Chapter 43.27A RCW.

Reclamation, conservation and settlement: Title 89 RCW.

79.48.010 Acceptance of grant. The state of Washington does hereby accept the terms of the act of congress approved August 18, 1894, donating to each of the public land states one million acres of arid land. [1895 c 166 § 1; RRS § 7922.]

Reviser's note: While the above section codifies 1895 c 166 § 1, the remainder of the 1895 act is omitted as it was from prior compilations. Succeeding sections in Chapter 79.48 RCW codify the 1903 act on this subject (1903 c 152). Concerning the amendment and repeal of the 1895 act and its various parts, see 1897 c 117, 1897 c 89 § 70, and 1903 c 152 § 24; see also *Howlett v. Cheetham*, 17 Wash. 626.

79.48.020 Acceptance of condition. The state of Washington hereby accepts the condition of section four of an act of congress entitled: "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30th, 1895, and for other purposes," approved August 18, 1894, and all acts subsequent and relating thereto together with all the grants of land to the state under the provisions of the aforesaid acts. [1903 c 152 § 1; RRS § 7923.]

79.48.030 Department to administer. The selection, management and disposal of said lands shall be vested in the commissioner of public lands of the state of Washington. He shall receive and file all proposals for

the construction of irrigation works to reclaim lands selected under the provisions of this chapter; prepare and keep for public inspection, maps or plats, on a scale of two inches to the mile, of all lands selected, receive entries of settlers on these lands, and hear or receive the final proof of their reclamation; and do any and all work required to be done in carrying out the provisions of this chapter. [1903 c 152 § 2; RRS § 7924.]

79.48.040 Request for selection. Any person, company or association of persons, or incorporated company, constructing, having constructed or desiring to construct ditches, canals or other navigation works, to reclaim land under the provisions of said act, shall file with the commissioner of public lands a request for the selection on behalf of the state by the commissioner of public lands of the land to be reclaimed, designating said land by legal subdivision. This request shall be accompanied by a proposal to construct the ditch, canal or other irrigation works necessary for the complete reclamation of the lands to be selected. The proposal shall be prepared in accordance with the rules of the commissioner of public lands and with the regulations of the department of the interior. It shall state the source of water supply, the location and dimensions of the proposed works, the price and terms per acre at which perpetual water rights will be sold to settlers on the land to be reclaimed. In the case of incorporated companies it shall state the name of the company, the purpose of its incorporation, the names and places of residence of its trustees and officers, the amount of its authorized and of its paid-up capital. If the applicant is not an incorporated company the proposal shall set forth the name or names of the party or parties, and such other facts as will enable the commissioner of public lands to determine his or their financial ability to carry out the proposed undertaking. [1903 c 152 § 3; RRS § 7925.]

79.48.050 Monetary guarantee of performance. A certified check for a sum not less than two hundred and fifty dollars nor more than two thousand five hundred dollars as may be determined by the rules of the commissioner of public lands shall accompany each such request and proposal, the same to be held as a guarantee of the execution of the contract with the state, in accordance with its terms, by the party submitting such proposal, in case of the approval of the same and the selection of the land by the commissioner of public lands, and to be forfeited to the state in case of the failure of said party to enter into a contract with the state in accordance with the provisions of this chapter. [1903 c 152 § 4; RRS § 7926.]

79.48.060 Examination and approval of request. Immediately upon the receipt of any request and proposal as designated in RCW 79.48.040, it shall be the duty of the commissioner of public lands to examine the same and ascertain if it complies in form with the rules of his office and the regulations of the department of the interior. If it does not it is to be returned for correction,

and, if not corrected within sixty days, it may be rejected by the commissioner. The commissioner of public lands shall determine whether or not the proposed works are feasible and the water appropriated and provided for is adequate and whether the maps filed in his office comply with the requirements of his office and the regulations of the department of the interior; also whether the lands proposed to be irrigated are desert in character, and such as may be properly set apart under the provisions of the aforesaid acts of congress and the rules and regulations of the department of the interior thereunder. When a request or proposal as to substance is not approved by the commissioner he shall notify the party making such request or proposal of his disapproval thereof and the reason therefor, and the party so notified shall have sixty days in which to make a satisfactory proposal but the commissioner may, at his discretion, extend the time to six months. [1903 c 152 § 5; RRS § 7927.]

79.48.070 List to be filed requesting withdrawal of lands. On receipt of the request and proposal, and the approval of the same by the commissioner of public lands, he shall file in the local United States land office a list in triplicate, describing the land embraced in said proposal with a request for the withdrawal of the land described in said list. [1903 c 152 § 6; RRS § 7928.]

79.48.080 Contract to be entered into—Terms—Performance bond. Upon the withdrawal of the land by the department of the interior, it shall be the duty of the commissioner of public lands to enter into a contract with the party submitting the proposal, which contract shall contain complete specifications of the location, dimensions and character of the proposed ditch, canal and other irrigation works; the price and terms per acre at which perpetual water rights shall be sold to the settler, the amount of water to be supplied; the price of an annual maintenance fee per acre, and the price and terms upon which the state is to dispose of the land to settlers: *Provided*, That such price and terms for irrigation works, water rights, maintenance fee and for lands to be disposed of by the state to settlers, shall in all cases be reasonable and just. This contract shall not be entered into on the part of the state until withdrawal of these lands by the department of the interior and the filing of a satisfactory bond on the part of the proposed contractor for irrigation works, which bond shall be in penal sum equal to five percent of the estimated cost of the works, and to be conditioned for the faithful performance of the provisions of the contract with the state: *Provided*, That no contract under the provisions of this chapter shall be entered into by the commissioner of public lands until the same shall have been approved by the attorney general and the governor. [1903 c 152 § 7; RRS § 7929.]

79.48.090 Life of contract—Time of commencement of work, etc. No contract shall be made by the commissioner of public lands which requires a greater time than ten years for the construction of the works

and such additional time as may be granted by the interior department as provided by the aforesaid acts of congress and amendments thereto, and all contracts shall state that the work shall begin within six months from the date of the contract; at least one-tenth of the construction work shall be completed within two years from the date of said contract; and the construction of said works shall be prosecuted with reasonable diligence to completion. [1903 c 152 § 8; RRS § 7930.]

79.48.100 Procedure on default of contractor—Receivership. Upon the failure of any party having a contract with the state for the construction of irrigation works, to begin the same within the time specified by the contract, or to complete the same within the time or in accordance with the specifications of the contract with the state, it shall be the duty of the commissioner of public lands to give such party written notice of such failure and if, after a period of sixty days from the giving of such notice such party shall have failed to proceed with the work or to conform to the specifications of his contract with the state the bond and contract of such party and all work constructed under such contract shall be at once and thereby forfeited to the state, and it shall be the duty of the commissioner of public lands at once so to declare and to give notice once each week for a period of four weeks in some newspaper of general circulation in the county in which the work is situated, and in one newspaper at the state capitol in like manner and for a like period, that upon a day fixed, proposals will be received at the office of the commissioner of public lands at Olympia, Washington, for the purchase of the incompleting works and for the completion of said contract, the time for receiving said bids to be at least sixty days subsequent to the issuing of the last notice of forfeiture. The money received from the sale of partially completed works, under the provisions of this section shall first be applied to the expenses incurred by the state in their forfeiture and disposal, to satisfy the bond, and the surplus, if any exists, shall be paid to the original contractor with the state. Whenever after the completion of said irrigation works any contractor or his successors or assigns shall fail to furnish an adequate amount of water to irrigate the lands of water right owners or there shall exist other cause as provided by law for the appointment of a receiver, the attorney general may apply for the appointment of a receiver to take possession of the irrigation works and canal and other property of such party, and manage, operate, sell or dispose of the same. Such application shall be made to the superior court of the county in which the whole or some portion of the irrigation works or canal of such party is situated; and the court or its receiver by order of the court shall have and may exercise such powers as to the possession, management, operation, sale or disposition of the property and works of such party as is provided by law relating to receivers: *Provided*, That nothing herein contained shall be taken or construed as limiting the right of any party to have a receiver appointed as is in other cases provided by law. [1903 c 152 § 9; RRS § 7931.]

79.48.110 State not liable for work done or contractor's default. Nothing in this chapter shall be construed as authorizing the commissioner of public lands to obligate the state to pay for any work constructed under any contract or to hold the state in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the state. [1903 c 152 § 10; RRS § 7932.]

79.48.120 Notice that land is open to settlement. Immediately upon the withdrawal of any land for the state by the department of the interior and the inauguration of work by the contractor, it shall be the duty of the commissioner of public lands, by publication once a week in one newspaper of the county or counties in which said land is situated, and such further notice as he may deem necessary, for a period of four weeks, that said land is open for settlement; the price for which said land will be sold to settlers by the state, the contract price at which settlers can purchase a perpetual water right, and the cost of an annual maintenance fee. [1903 c 152 § 11; RRS § 7933.]

79.48.130 Application for entry—Certificate of location—Minimum price. Any citizen of the United States, or any person having declared his intention to become a citizen of the United States eighteen years of age or over, may make application under oath, to the commissioner of public lands, to enter any of said lands in any amount not to exceed one hundred and sixty acres for any one person; such application shall set forth that the person desiring to make such entry does so for the purpose of actual reclamation, cultivation and settlement in accordance with the act of congress and the laws of this state relating thereto, and the applicant has never received the benefit of the provisions of this chapter, to an amount greater than one hundred and sixty acres, including the number of acres specified in the application under consideration. Such application must be accompanied by a certified copy of a contract for a perpetual water right, made and entered into by the party making application with the person, company or association of persons, or incorporated company who have been authorized by the commissioner of public lands to furnish water for the reclamation of said land; and if said applicant has at any previous time entered land under the provisions of this chapter, he shall so state in his application, together with the description, date of entry and location of said lands. The commissioner of public lands shall thereupon file in his office the application and papers relating thereto, and, if allowed, issue a certificate of location to the applicant. All applications for entry shall be accompanied by a payment of one dollar per acre, which shall be paid as a partial payment on the land if the application is allowed, and all certificates when issued shall be recorded in a book to be kept for that purpose. If the application is not allowed, or the contractor fails to complete the work according to contract the one dollar per acre accompanying the application shall be returned to the applicant. The commissioner of public lands shall dispose of all lands accepted by the state under the provisions

of this chapter at a uniform price of not less than ten dollars per acre, one-tenth to be paid at the time of entry and the remainder in nine equal annual installments, with interest at six percent per annum payable annually, provided a settler may make payment in full at any time upon or after making final proof. [1973 1st ex.s. c 154 § 115; 1971 ex.s. c 292 § 55; 1903 c 152 § 12; RRS § 7934.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

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

79.48.140 Disposition of funds. All moneys received by the commissioner of public lands from the sale of lands selected under the provisions of this chapter shall be deposited with the state treasurer and shall constitute a trust fund in the hands of said treasurer to be used in the reclamation of other arid lands. [1903 c 152 § 13; RRS § 7935.]

Proceeds from sale of land to be paid into general fund: RCW 43.79.010.

79.48.150 Contract of purchase—Payments—Cultivation requirements—Final proof—Patent. Within one year after any person, company or association of persons or incorporated company authorized to construct irrigation works under the provisions of this chapter, shall have notified the settlers under such works that they are prepared to furnish water under the terms of their contract with the state, each settler shall enter into a contract with the state for the purchase of the land described in his certificate of location, complete the first annual payment thereon, and shall cultivate and reclaim not less than one-sixteenth part of the land filed upon by him, and within two years after the said notice, the settler shall have actually irrigated and cultivated not less than one-eighth of the land filed upon, and within ten years from the date of said notice the settler shall appear before the commissioner of public lands or the clerk of the superior court, within the county wherein said land is situated and make final proof of reclamation, settlement and occupation, which proof shall embrace evidence that he has a perpetual water right for his entire tract of land sufficient in volume for the complete irrigation and reclamation thereof; that he is an actual settler thereon and has cultivated and irrigated not less than one-eighth of said tract, and such further proof, if any, as may be required by the regulations of the department of the interior, and the commissioner of public lands. The officer taking this proof shall be entitled to receive a fee of two dollars, which fee shall be paid by the settler and shall be in addition to the price paid for the land. All proofs so received shall be submitted to the commissioner of public lands and shall be accompanied by the last and final payment for said land, and approved by the commissioner of public lands, and such proceedings had that a patent of said land shall be issued: *Provided*, That when the commissioner of public lands shall take such final proof all fees received by him shall be turned in to the state treasurer. [1903 c 152 § 14; RRS § 7936.]

79.48.160 Issuance of patent. After the issuance of a patent to any land by the United States to the state, notice thereof shall be forwarded to the party, if any entitled to said land, and, upon full payment having been made, it shall be the duty of the commissioner of public lands to certify such fact to the governor, whereupon he shall cause a patent to be issued to the purchaser, the patent to be signed by the governor and attested by the secretary of state with the seal of the state thereto attached, and shall be recorded in the office of the commissioner of public lands, and no fee shall be required other than the fee provided for in this chapter. [1903 c 152 § 15; RRS § 7937.]

79.48.170 Water right—Lien for water payments—Foreclosure. The water right to all land acquired under the provisions of this chapter shall attach to and become appurtenant to the land as soon as title passes from the United States to the state. Any person, company or association of persons, or incorporated company furnishing water for any tract of land shall have a prior lien on said water right and land upon which said water is used for all deferred payments for said water right and for any maintenance fee due, said lien to be in all respects prior to any other lien or liens created or attempted to be created by the owner or possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right was acquired and until all delinquent maintenance fees are fully paid. The contract for the water right upon which the aforesaid lien is founded shall be recorded in the office of the county auditor of the county where the land is situated. Upon default of any of the deferred payments secured by any lien under the provisions of this chapter and any maintenance fee, the person, company, or association of persons, or incorporated company holding or owning said lien, may foreclose the same according to the conditions and terms of the contract granting and selling to the settler the water right and providing for a maintenance fee. All sales shall be advertised in a newspaper of general circulation, published in the county where said land and water right is situated, once a week, for four consecutive weeks, and shall be sold to the highest bidder at the front door of the court house of the county, or such place as may be agreed upon by the terms of the contract. And the sheriff of said county shall in all such cases give notice of sale and shall sell such land and water right and shall make and deliver a certificate of sale to the purchaser, and at such sale no person, company, or association or persons, or incorporated company, owning or holding any lien shall bid in or purchase any land or water right at a greater price than the amount due on deferred payment or payments for said water right and land and maintenance fee due and the costs incurred in making the sale of the land and water right. At any time within nine months after the foreclosure sale by the sheriff of the land and water right as aforesaid, the original owner against whom the lien has been foreclosed, or any other party entitled to redeem land sold under execution may redeem land

and water right so sold in the same manner and order and under the same procedure as is or may be provided by law for the redemption of land sold under execution. The party reclaiming said land and water right shall pay to the sheriff the amount for which said land and water right was sold and costs and increased costs, together with interest thereon at the legal rate, and all taxes and payments maturing subsequent to such foreclosure as well as all maintenance fees due at the time of redemption with interest at like rate. If there be more than one redemption each successive redemption shall be made within six weeks after the last preceding redemption. And where the lienholder becomes the purchaser at such foreclosure sale, and in no other case, if such land and water right be not redeemed by the original owner or other person entitled to redeem as above provided within nine months then at any time within three months after the expiration of such nine months any person desiring to settle upon and use such land and water right may redeem the said land and water right in the manner hereinbefore provided for redemption by the owner or other redemptioners. Where such land and water right are not purchased by the lienholder at such foreclosure sale the sheriff shall pay out the proceeds of such sale as follows:

(1) He shall retain all charges, costs and fees for his services and account for the same as in civil cases.

(2) To the lienholder or his assigns the amount of the lien together with all interest, costs and fixed charges thereon.

(3) The balance of any remaining, to the person against whom such lien was foreclosed or his assigns. When the period of redemption shall have expired the sheriff or his successor in office shall execute a proper conveyance of the land and water right sold, to the party entitled thereto. The foreclosure herein provided for may be transferred to the superior court of the proper county in the same manner and with like effect as foreclosure of chattel mortgages on notice may be transferred. [1903 c 152 § 16; RRS § 7938.]

Sales under execution and redemption: Chapter 6.24 RCW.

79.48.180 Map of works—Right of way for canals, etc. The maps in the office of the commissioner of public lands, of the land selected under the provisions of this chapter, shall show the location of the canals or other irrigation works approved in the contract with the commissioner of public lands, and all land filed upon shall be subject to the right of way of such canals, distribution system and irrigation works. Such right of way to embrace the entire width of the canal, distribution and irrigation works and such additional width as may be required for their proper operation and maintenance. [1903 c 152 § 17; RRS § 7939.]

79.48.190 Rules for filing—Annual report of irrigation companies. The commissioner of public lands shall provide suitable rules for the filing of proposals for constructing irrigation works, and for the forfeiture of entry by settlers, upon failure to comply with the provisions of this chapter. There shall be kept in the office of the commissioner of public lands for public inspection,

copies of all maps, plats, contracts for the construction of irrigation works, and of the entries of the land by settlers. He shall require from each person, company or association of persons, or incorporated company engaged in the construction of irrigation works under the provisions of this chapter, an annual report, to be submitted to him on or before November 1st of each year. This report shall show the number of water rights sold, the number of users of water under said irrigation works, the legal subdivisions of land for which water is to be furnished, the names of the officers of the company, the acreage of land which the said irrigation works are prepared to supply with water, and such other data as the commissioner of public lands may see fit to require. The rules required by this section may be waived in the case of irrigation works being constructed by any person, colony or association of persons to furnish water for land settled upon and being reclaimed by themselves. [1903 c 152 § 18; RRS § 7940.]

79.48.200 Fees. The commissioner of public lands shall collect the following fees: For filing each application one dollar; for filing each final proof one dollar; for issuing each patent two dollars; for making certified copies of papers or records, the same fee as is provided for to be charged by the secretary of state for like services. All moneys collected and fees received under this chapter shall be paid by the commissioner of public lands to the state treasurer and credited by him to the trust fund created by said act of congress. [1903 c 152 § 19; RRS § 7941.]

Other fees: RCW 79.01.720.

Secretary of state, fees: RCW 43.07.120.

79.48.210 Annual report. The commissioner of public lands shall issue on or before November 30th of each year a report setting forth in detail the names, location and character of the irrigation works in process of construction, the acreage and legal subdivision of land intended to be reclaimed, and the terms of payment for both water rights and land. Not less than one thousand copies of such report shall be printed for gratuitous distribution. [1903 c 152 § 20; RRS § 7942.]

79.48.220 Water rights extended to state lands. Any contract for the reclamation of arid land under this chapter shall provide that a water right be extended to all state, school and granted lands owned by the state of Washington, under the canal and irrigation works to be constructed under such contract at the same rates and upon the same terms and conditions as apply to the lands granted under said act of congress. [1903 c 152 § 21; RRS § 7943.]

79.48.230 Reimbursement of state. The state of Washington shall, out of the money arising from its disposal of any lands selected under this chapter, first reimburse itself for any and all costs and expenditures incurred, and heretofore incurred, by it in selecting, irrigating and reclaiming said land. [1903 c 152 § 22; RRS § 7944.]

79.48.240 Actions to be in name of state. All suits or actions brought by the commissioner of public lands, under the provisions of this chapter, shall be instituted by him in the name of the state of Washington. [1903 c 152 § 23; RRS § 7945.]

Chapter 79.60 SUSTAINED YIELD COOPERATIVE AGREEMENTS

Sections

79.60.010	Cooperation.
79.60.020	Cooperative units.
79.60.030	Limitations on agreements.
79.60.040	Easement over state land during life of agreement.
79.60.050	Sale agreements.
79.60.060	Minimum price—Alternative bases—Bids and awards.
79.60.070	Contracts—Requirements.
79.60.080	Transfer or assignment of contract of purchase.
79.60.090	Performance bond—Cash deposit.

Reviser's note: The powers and duties of certain agencies mentioned this chapter have devolved upon the department of natural resources, see reviser's note following Title 79 RCW digest.

79.60.010 Cooperation. The state forest board with regard to state forest board lands, and the commissioner of public lands with regard to state granted lands, are hereby authorized to enter into cooperative agreements with the United States of America, Indian tribes, and private owners of timber land providing for coordinated forest management, including time, rate and method of cutting timber and method of silvicultural practice on a sustained yield unit. Wherever applicable in this chapter, it shall be understood that the state forest board shall have complete authority over state forest board lands and the commissioner of public lands complete authority over state granted land. [1941 c 123 § 1; 1939 c 130 § 1; Rem. Supp. 1941 § 7879–11. Formerly RCW 79.52.070.]

79.60.020 Cooperative units. The state forest board and the commissioner of public lands are hereby authorized and directed to determine, define and declare informally the establishment of a sustained yield unit, comprising the land area to be covered by any such cooperative agreement and include therein such other lands as may be later acquired by the state forest board and included under the cooperative agreement. [1939 c 130 § 2; RRS § 7879–12. Formerly RCW 79.52.080.]

79.60.030 Limitations on agreements. The state shall agree that the cutting from combined national forest and state lands will be limited to the sustained yield capacity of these lands in the management unit as determined by the contracting parties and approved by the state forest board and the commissioner of public lands. Cooperation with the private contracting party or parties shall be contingent on limitation of production to a specified amount as determined by the contracting parties and approved by the state forest board and the commissioner of public lands and shall comply with the other conditions and requirements of such cooperative

agreement. [1939 c 130 § 3; RRS § 7879–13. Formerly RCW 79.52.090.]

79.60.040 Easement over state land during life of agreement. The private contracting party or parties shall enjoy the right of easement over state forest board lands and state granted lands included under said cooperative agreement for railway, road and other uses necessary to the carrying out of the agreement. This easement shall be only for the life of the cooperative agreement and shall be granted without charge with the provision that payment shall be made for all merchantable timber cut, removed or damaged in the use of such easement, payment to be based on the contract stumpage price for timber of like value and species and to be made within thirty days from date of cutting, removal and/or damage of such timber and appraisal thereof by the commissioner of public lands and the state forest board. [1941 c 123 § 2; Rem. Supp. 1941 § 7879–13a. Formerly RCW 79.52.110.]

79.60.050 Sale agreements. During the period when any such cooperative agreement is in effect, the timber on the state lands which the state forest board and the commissioner of public lands determine shall be included in the sustained yield unit may, from time to time, be sold at not less than its appraised value as approved by the state forest board and the commissioner of public lands, due consideration being given to existing forest conditions on all lands included in the cooperative management unit and such sales may be made in the discretion of the state forest board and the commissioner of public lands and the contracting party or parties in the cooperative sustained yield agreement. These sale agreements shall contain such provisions as are necessary to effectually permit the state forest board and the commissioner of public lands to carry out the purpose of this section and in other ways afford adequate protection to the public interests involved. [1939 c 130 § 4; RRS § 7879–14. Formerly RCW 79.52.100.]

79.60.060 Minimum price—Alternative bases—Bids and awards. The sale of timber upon state forest board land and state granted land within such sustained yield unit or units shall be made for not less than the appraised value thereof as heretofore provided for the sale of timber on state lands: *Provided*, That, if in the judgment of the state forest board or the commissioner of public lands, it is to the best interests of the state to do so, said timber or any such sustained yield unit or units may be sold on a stumpage or scale basis for a price per thousand not less than the appraised value thereof. The state forest board and the commissioner of public lands shall reserve the right to reject any and all bids if the intent of this chapter will not be carried out. Permanency of local communities and industries, prospects of fulfillment of contract requirements, and financial position of the bidder shall all be factors included in this decision. [1939 c 130 § 5; RRS § 7879–15. Formerly RCW 79.52.040.]

79.60.070 Contracts—Requirements. A written contract shall be entered into with the successful bidder which shall fix the time when logging operations shall be commenced and concluded and require monthly payments for timber removed as soon as scale sheets have been tabulated and the amount of timber removed during the month determined, or require payments monthly in advance at the discretion of the board or the commissioner. The board and the commissioner shall designate the price per thousand to be paid for each species of timber and shall provide for supervision of logging operations, the methods of scaling and report, and shall require the purchaser to comply with all laws of the state of Washington with respect to fire protection and logging operation of the timber purchased; and shall contain such other provisions as may be deemed advisable. [1939 c 130 § 6; RRS § 7879-16. Formerly RCW 79.52.050, part.]

79.60.080 Transfer or assignment of contract of purchase. No transfer or assignment by the purchaser shall be valid unless the transferee or assignee is acceptable to the commissioner of public lands and the state forest board and the transfer or assignment approved by them in writing. [1941 c 123 § 3; Rem. Supp. 1941 § 7879-16a. Formerly RCW 79.52.120.]

79.60.090 Performance bond—Cash deposit. The purchaser shall, at the time of executing the contract, deliver a performance bond or sureties acceptable in regard to terms and amount to the commissioner of public lands and the state forest board, but such performance bond or sureties shall not exceed ten percent of the estimated value of the timber purchased computed at the stumpage price and at no time shall exceed a total of fifty thousand dollars. The purchaser shall also be required to make a cash deposit equal to twenty percent of the estimated value of the timber purchased, computed at the stumpage bid. Upon failure of the purchaser to comply with the terms of the contract, the performance bond or sureties may be forfeited to the state upon order of the forest board or the commissioner of public lands.

At no time shall the amount due the state for timber actually cut and removed exceed the amount of the deposit as hereinabove set forth. The amount of the deposit shall be returned to the purchaser upon completion and full compliance with the contract by the purchaser, or it may, at the discretion of the purchaser, be applied on final payment on the contract. [1941 c 123 § 4; 1939 c 130 § 7; Rem. Supp. 1941 § 7879-17. Formerly RCW 79.52.060.]

Chapter 79.64

FUNDS FOR MANAGING AND ADMINISTERING LANDS

Sections	
79.64.010	Definitions.
79.64.020	Resource management cost account—Created—Specified purposes for use.
79.64.030	Expenditures of certain funds in account to be for lands of same trust.

79.64.040	Deductions from proceeds of all transactions authorized—Limitations.
79.64.050	Deductions to be paid into account.
79.64.055	Interest—Apportionment—Disposition.
79.64.060	Rules relating to account.
79.64.070	Severability—1961 c 178.

79.64.010 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

- (1) "Account" means the resource management cost account in the state general fund.
- (2) "Department" means the department of natural resources.
- (3) "Board" means the board of natural resources of the department of natural resources.
- (4) "Rule" means rule as the same is defined by RCW 34.04.010.
- (5) The definitions set forth in RCW 79.01.004 shall be applicable. [1967 ex.s. c 63 § 1; 1961 c 178 § 1.]

79.64.020 Resource management cost account—Created—Specified purposes for use. A resource management cost account in the state general fund is hereby created to be used solely for the purpose of defraying the costs and expenses necessarily incurred by the department in managing and administering public lands and the making and administering of leases, sales, contracts, licenses, permits, easements, and rights of way as authorized under the provisions of this title. Appropriations from the account shall be expended for no other purposes. [1961 c 178 § 2.]

79.64.030 Expenditures of certain funds in account to be for lands of same trust. Funds in the account derived from the gross proceeds of leases, sales, contracts, licenses, permits, easements, and rights of way issued by the department and affecting school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands shall be expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in managing and administering public lands of the same trust. [1961 c 178 § 3.]

79.64.040 Deductions from proceeds of all transactions authorized—Limitations. The board shall determine the amount deemed necessary in order to achieve the purposes of this chapter and shall provide by rule for the deduction of this amount from the gross proceeds of all leases, sales, contracts, licenses, permits, easements, and rights of way issued by the department and affecting public lands. The deductions authorized under this section shall in no event exceed twenty-five percent of the total sum received by the department in connection with any one transaction pertaining to public lands other than second class tide and shore lands and the beds of navigable waters, and fifty percent of the total gross proceeds received by the department pertaining to second class tide and shore lands and the beds of navigable waters. [1971 ex.s. c 224 § 2; 1967 ex.s. c 63 § 2; 1961 c 178 § 4.]

79.64.050 Deductions to be paid into account. All deductions from gross proceeds made in accordance with RCW 79.64.040 shall be paid into the account and the balance shall be paid into the state treasury to the credit of the fund otherwise entitled to the proceeds. [1961 c 178 § 5.]

79.64.055 Interest—Apportionment—Disposition. Interest earned by trust moneys in the resource management cost account shall be deemed trust income to be apportioned according to the source and paid into the appropriate fund in the state treasury. Interest earned by other than trust moneys shall be paid into the general fund of the state treasury. [1967 ex.s. c 63 § 3.]

79.64.060 Rules relating to account. The board shall adopt such rules as it deems necessary and proper for the purpose of carrying out the provisions of RCW 79.64.010 through 79.64.080. [1961 c 178 § 6.]

79.64.070 Severability—1961 c 178. If any provision of RCW 79.64.010 through 79.64.080, or its application to any person or circumstance is held invalid, the remainder of RCW 79.64.010 through 79.64.080, or the application of the provision to other persons or circumstances is not affected. [1961 c 178 § 7.]

Chapter 79.68

MULTIPLE USE CONCEPT IN MANAGEMENT AND ADMINISTRATION OF STATE-OWNED LANDS

Sections

79.68.010	Concept to be utilized, when.
79.68.020	"Multiple use" defined.
79.68.030	"Sustained yield plans" defined.
79.68.040	Department to periodically adjust acreages under sustained yield management program.
79.68.050	Multiple uses compatible with financial obligations of trust management—Other uses permitted, when.
79.68.060	Public lands identified and withdrawn from conflicting uses—Effect—Limitation.
79.68.070	Scope of department's authorized activities.
79.68.080	Fostering use of aquatic environment—Limitation.
79.68.090	Multiple use land resource allocation plan—Adoption—Factors considered.
79.68.100	Conferring with other agencies—Public hearings authorized.
79.68.110	Compliance with local ordinances, when.
79.68.120	Land use data bank—Contents, source—Consultants authorized—Use.
79.68.900	Department's existing authority and powers preserved.
79.68.910	Existing withdrawals for state park and state game purposes preserved.

79.68.010 Concept to be utilized, when. The legislature hereby directs that a multiple use concept be utilized by the department of natural resources in the management and administration of state-owned lands under the jurisdiction of the department where such a concept is in the best interests of the state and the general welfare of the citizens thereof, and is consistent with the applicable trust provisions of the various lands involved. [1971 ex.s. c 234 § 1.]

79.68.020 "Multiple use" defined. "Multiple use" as used in RCW 79.01.128, 79.44.003 and this chapter shall mean the management and administration of state-owned lands under the jurisdiction of the department of natural resources to provide for several uses simultaneously on a single tract and/or planned rotation of one or more uses on and between specific portions of the total ownership consistent with the provisions of RCW 79.68.010. [1971 ex.s. c 234 § 2.]

79.68.030 "Sustained yield plans" defined. "Sustained yield plans" as used in RCW 79.01.128, 79.44.003 and this chapter shall mean management of the forest to provide harvesting on a continuing basis without major prolonged curtailment or cessation of harvest. [1971 ex.s. c 234 § 3.]

79.68.040 Department to periodically adjust acreages under sustained yield management program. The department of natural resources shall manage the state-owned lands under its jurisdiction which are primarily valuable for the purpose of growing forest crops on a sustained yield basis insofar as compatible with other statutory directives. To this end, the department shall periodically adjust the acreages designated for inclusion in the sustained yield management program. [1971 ex.s. c 234 § 4.]

79.68.050 Multiple uses compatible with financial obligations of trust management—Other uses permitted, when. Multiple uses additional to and compatible with those basic activities necessary to fulfill the financial obligations of trust management may include but are not limited to:

- (1) Recreational areas;
- (2) Recreational trails for both vehicular and nonvehicular uses;
- (3) Special educational or scientific studies;
- (4) Experimental programs by the various public agencies;
- (5) Special events;
- (6) Hunting and fishing and other sports activities;
- (7) Maintenance of scenic areas;
- (8) Maintenance of historical sites;
- (9) Municipal or other public watershed protection;
- (10) Greenbelt areas;
- (11) Public rights of way;
- (12) Other uses or activities by public agencies;

If such additional uses are not compatible with the financial obligations in the management of trust land they may be permitted only if there is compensation from such uses satisfying the financial obligations. [1971 ex.s. c 234 § 5.]

79.68.060 Public lands identified and withdrawn from conflicting uses—Effect—Limitation. For the purpose of providing increased continuity in the management of public lands and of facilitating long range planning by interested agencies, the department of natural resources is authorized to identify and to withdraw from all conflicting uses at such times and for such periods as it shall determine appropriate, limited acreages

of public lands under its jurisdiction. Acreages so withdrawn shall be maintained for the benefit of the public and, in particular, of the public schools, colleges and universities, as areas in which may be observed, studied, enjoyed, or otherwise utilized the natural ecological systems thereon, whether such systems be unique or typical to the state of Washington. Nothing herein is intended to or shall modify the department's obligation to manage the land under its jurisdiction in the best interests of the beneficiaries of granted trust lands. [1971 ex.s. c 234 § 6.]

79.68.070 Scope of department's authorized activities.

The department of natural resources is hereby authorized to carry out all activities necessary to achieve the purposes of RCW 79.01.128, 79.44.003 and this chapter, including, but not limited to:

(1) Planning, construction and operation of recreational sites, areas, roads and trails, by itself or in conjunction with any public agency;

(2) Planning, construction and operation of special facilities for educational, scientific, or experimental purposes by itself or in conjunction with any other public or private agency;

(3) Improvement of any lands to achieve the purposes of RCW 79.01.128, 79.44.003 and this chapter;

(4) Cooperation with public and private agencies in the utilization of such lands for watershed purposes;

(5) The authority to make such leases, contracts, agreements or other arrangements as are necessary to accomplish the purposes of RCW 79.01.128, 79.44.003 and this chapter: *Provided*, That nothing herein shall affect any existing requirements for public bidding or auction with private agencies or parties, except that agreements or other arrangements may be made with public schools, colleges, universities, governmental agencies, and nonprofit scientific and educational associations. [1971 ex.s. c 234 § 7.]

79.68.080 Fostering use of aquatic environment—

Limitation. The department of natural resources shall foster the commercial and recreational use of the aquatic environment for production of food, fibre, income, and public enjoyment from state-owned aquatic lands under its jurisdiction and from associated waters, and to this end the department may develop and improve production and harvesting of seaweeds and sea-life attached to or growing on aquatic land or contained in aquaculture containers, but nothing in this section shall alter the responsibility of other state agencies for their normal management of fish, shellfish, game and water. [1971 ex.s. c 234 § 8.]

79.68.090 Multiple use land resource allocation plan—Adoption—Factors considered. The department of natural resources may adopt a multiple use land resource allocation plan for all or portions of the lands under its jurisdiction providing for the identification and establishment of areas of land uses and identifying those uses which are best suited to achieve the purposes of RCW 79.01.128, 79.44.003 and this chapter. Such plans shall take into consideration the various

ecological conditions, elevations, soils, natural features, vegetative cover, climate, geographical location, values, public use potential, accessibility, economic uses, recreational potentials, local and regional land use plans or zones, local, regional, state and federal comprehensive land use plans or studies, and all other factors necessary to achieve the purposes of RCW 79.01.128, 79.44.003 and this chapter. [1971 ex.s. c 234 § 9.]

79.68.100 Conferring with other agencies—Public hearings authorized. The department of natural resources may confer with other public and private agencies to facilitate the formulation of policies and/or plans providing for multiple use concepts. The department of natural resources is empowered to hold public hearings from time to time to assist in achieving the purposes of RCW 79.01.128, 79.44.003 and this chapter. [1971 ex.s. c 234 § 10.]

79.68.110 Compliance with local ordinances, when.

The department of natural resources may comply with county or municipal zoning ordinances, laws, rules or regulations affecting the use of state lands under the jurisdiction of the department of natural resources where such regulations are consistent with the treatment of similar private lands. [1971 ex.s. c 234 § 13.]

79.68.120 Land use data bank—Contents, source—Consultants authorized—Use. (1) The department of natural resources shall design expansion of its land use data bank to include additional information that will assist in the formulation, evaluation, and updating of intermediate and long-range goals and policies for land use, population growth and distribution, urban expansion, open space, resource preservation and utilization, and other factors which shape state-wide development patterns and significantly influence the quality of the state's environment. The system shall be designed to permit inclusion of other lands in the state and will do so as financing and time permit.

(2) Such data bank shall contain any information relevant to the future growth of agriculture, forestry, industry, business, residential communities, and recreation; the wise use of land and other natural resources which are in accordance with their character and adaptability; the conservation and protection of the soil, air, water, and forest resources; the protection of the beauty of the landscape; and the promotion of the efficient and economical uses of public resources.

The information shall be assembled from all possible sources, including but not limited to, the federal government and its agencies, all state agencies, all political subdivisions of the state, all state operated universities and colleges, and any source in the private sector. All state agencies, all political subdivisions of the state, and all state universities and colleges are directed to cooperate to the fullest extent in the collection of data in their possession. Information shall be collected on all areas of the state but collection may emphasize one region at a time.

(3) The data bank shall make maximum use of computerized or other advanced data storage and retrieval

methods. The department is authorized to engage consultants in data processing to ensure that the data bank will be as complete and efficient as possible.

(4) The data shall be made available for use by any governmental agency, research organization, university or college, private organization or private person as a tool to evaluate the range of alternatives in land and resource planning in the state. [1971 ex.s. c 234 § 16.]

Participation in development of data bank: RCW 44.40.060.

79.68.900 Department's existing authority and powers preserved. Nothing in RCW 79.01.128, 79.44.003 and this chapter shall be construed to affect or repeal any existing authority or powers of the department of natural resources in the management or administration of the lands under its jurisdiction. [1971 ex.s. c 234 § 12.]

79.68.910 Existing withdrawals for state park and state game purposes preserved. Nothing in RCW 79.01.128, 79.44.003 and this chapter shall be construed to affect, amend, or repeal any existing withdrawal of public lands for state park or state game purposes. [1971 ex.s. c 234 § 15.]

Chapter 79.70 NATURAL AREA PRESERVES

Sections

79.70.010	Purpose.
79.70.020	Definitions.
79.70.030	Powers of department.
79.70.040	Powers as to transactions involving public lands deemed natural areas—Alienation of lands designated natural area preserves.
79.70.050	Natural preserves advisory committee.
79.70.900	Construction—1972 ex.s. c 119.

79.70.010 Purpose. The purpose of this chapter is to establish a state system of natural area preserves and a means whereby the preservation of these aquatic and land areas can be accomplished.

All areas within the state, except those which are expressly dedicated by law for preservation and protection in their natural condition, are subject to alteration by human activity. Natural lands, together with the plants and animals living thereon in natural ecological systems, are valuable for the purposes of scientific research, teaching, as habitats of rare and vanishing species, as places of natural historic and natural interest and scenic beauty, and as living museums of the original heritage of the state.

It is, therefore, the public policy of the state of Washington to secure for the people of present and future generations the benefit of an enduring resource of natural areas by establishing a system of natural area preserves, and to provide for the protection of these natural areas. [1972 ex.s. c 119 § 1.]

79.70.020 Definitions. For the purposes of this chapter:

(1) "Department" shall mean the department of natural resources.

(2) "Natural areas" and "natural area preserves" shall mean such public or private areas of land or water which have retained their natural character, although not necessarily completely natural and undisturbed, or which are important in preserving rare or vanishing flora, fauna, archeological, natural historical or similar features of scientific or educational value.

(3) "Public lands" and "state lands" shall have the meaning set out in RCW 79.01.004.

(4) "Committee" shall mean the Washington state natural preserves advisory committee created in RCW 79.70.050. [1972 ex.s. c 119 § 2.]

79.70.030 Powers of department. In order to set aside, preserve and protect natural areas within the state, the department is authorized, in addition to any other powers, to:

(1) Establish by rule and regulation the criteria for selection, acquisition, management, protection and use of such natural areas;

(2) Cooperate and contract with any federal, state, or local governmental agency, private organizations or individuals in carrying out the purpose of this chapter;

(3) Acquire by gift, devise, purchase, grant, dedication, or means other than eminent domain, the fee or any lesser right or interest in real property which shall be held and managed as a natural area; and

(4) Acquire by gift, devise, grant or donation any personal property to be used in the acquisition and/or management of natural areas;

(5) Inventory existing public, state and private lands in cooperation with the committee to assess possible natural areas to be preserved within the state. [1972 ex.s. c 119 § 3.]

79.70.040 Powers as to transactions involving public lands deemed natural areas—Alienation of lands designated natural area preserves. The department is further authorized to purchase, lease, set aside or exchange any public land or state-owned trust lands which are deemed to be natural areas: *Provided*, That the appropriate state land trust receives the fair market value for any interests that are disposed of: *Provided, further*, That such transactions are approved by the board of natural resources.

An area consisting of public land or state-owned trust lands designated as a natural area preserve shall be held in trust and shall not be alienated except to another public use upon a finding by the department of natural resources of imperative and unavoidable public necessity. [1972 ex.s. c 119 § 4.]

79.70.050 Natural preserves advisory committee. A Washington state natural preserves advisory committee is hereby created within the department of natural resources to assist the department in carrying out the intent of this chapter. Such committee shall consist of seven members appointed by the commissioner of the department. Any vacancies shall be filled in the same manner. Members shall be chosen from persons with an interest in the establishment of natural areas and shall serve a period of three years. [1972 ex.s. c 119 § 5.]

79.70.900 Construction—1972 ex.s. c 119. Nothing in this chapter is intended to supersede or otherwise affect any existing legislation. [1972 ex.s. c 119 § 6.]

Chapter 79.76 GEOTHERMAL RESOURCES

Sections

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79.76.010 Legislative declaration. The public has a direct interest in the safe, orderly and nearly pollution-free development of the geothermal resources of the state, as hereinafter in RCW 79.76.030(1) defined. The legislature hereby declares that it is in the best interests of the state to further the development of geothermal resources for the benefit of all of the citizens of the state while at the same time fully providing for the protection of the environment. The development of geothermal resources shall be so conducted as to protect the rights of landowners, other owners of interests therein, and the general public. In providing for such development, it is the purpose of this chapter to provide for the orderly exploration, safe drilling, production and proper abandonment of geothermal resources in the state of Washington. [1974 1st ex.s. c 43 § 1.]

79.76.020 Short title. This chapter shall be known as the Geothermal Resources Act. [1974 1st ex.s. c 43 § 2.]

79.76.030 Definitions. For the purposes of this chapter, unless the text otherwise requires, the following terms shall have the following meanings:

(1) "Geothermal resources" means only that natural heat energy of the earth from which it is technologically practical to produce electricity commercially and the medium by which such heat energy is extracted from the earth, including liquids or gases, as well as any minerals contained in any natural or injected fluids, brines and associated gas, but excluding oil, hydrocarbon gas and other hydrocarbon substances.

(2) "Waste", in addition to its ordinary meaning, shall mean "physical waste" as that term is generally understood and shall include:

(a) The inefficient, excessive, or improper use of, or unnecessary dissipation of, reservoir energy; or the locating, spacing, drilling, equipping, operating or producing of any geothermal energy well in a manner which results, or tends to result, in reducing the quantity of geothermal energy to be recovered from any geothermal area in this state;

(b) The inefficient above-ground transporting or storage of geothermal energy; or the locating, spacing, drilling, equipping, operating, or producing of any geothermal well in a manner causing, or tending to cause, unnecessary excessive surface loss or destruction of geothermal energy;

(c) The escape into the open air, from a well of steam or hot water, in excess of what is reasonably necessary in the efficient development or production of a geothermal well.

(3) "Geothermal area" means any land that is, or reasonably appears to be, underlain by geothermal resources.

(4) "Energy transfer system" means the structures and enclosed fluids which facilitate the utilization of geothermal energy. The system includes the geothermal wells, cooling towers, reinjection wells, equipment directly involved in converting the heat energy associated with geothermal resources to mechanical or electrical energy or in transferring it to another fluid, the closed piping between such equipment, wells and towers and that portion of the earth which facilitates the transfer of a fluid from reinjection wells to geothermal wells: *Provided*, That the system shall not include any geothermal resources which have escaped into or have been released into the nongeothermal ground or surface waters from either man-made containers or through leaks in the structure of the earth caused by or to which access was made possible by any drilling, redrilling, reworking or operating of a geothermal or reinjection well.

(5) "Operator" means the person supervising or in control of the operation of a geothermal resource well, whether or not such person is the owner of the well.

(6) "Owner" means the person who possesses the legal right to drill, convert or operate any well or other facility subject to the provisions of this chapter.

(7) "Person" means any individual, corporation, company, association of individuals, joint venture, partnership, receiver, trustee, guardian, executor, administrator, personal representative, or public agency that is the subject of legal rights and duties.

(8) "Pollution" means any damage or injury to ground or surface waters, soil or air resulting from the unauthorized loss, escape, or disposal of any substances at any well subject to the provisions of this chapter.

(9) "Department" means the department of natural resources.

(10) "Well" means any excavation made for the discovery or production of geothermal resources, or any special facility, converted producing facility, or reactivated or converted abandoned facility used for the re-injection of geothermal resources, or the residue thereof underground.

(11) "Core holes" are holes drilled or excavations made expressly for the acquisition of geological or geophysical data for the purpose of finding and delineating a favorable geothermal area prior to the drilling of a well.

(12) A "completed well" is a well that has been drilled to its total depth, has been adequately cased, and is ready to be either plugged and abandoned, shut-in, or put into production.

(13) "Plug and abandon" means to place permanent plugs in the well in such a way and at such intervals as are necessary to prevent future leakage of fluid from the well to the surface or from one zone in the well to the other, and to remove all drilling and production equipment from the site, and to restore the surface of the site to its natural condition or contour or to such condition as may be prescribed by the department.

(14) "Shut-in" means to adequately cap or seal a well to control the contained geothermal resources for an interim period. [1974 1st ex.s. c 43 § 3.]

79.76.040 Geothermal resources deemed sui generis. Notwithstanding any other provision of law, geothermal resources are found and hereby determined to be sui generis, being neither a mineral resource nor a water resource. [1974 1st ex.s. c 43 § 4.]

79.76.050 Administration of chapter. (1) The department shall administer and enforce the provisions of this chapter and the rules, regulations, and orders relating to the drilling, operation, maintenance, abandonment and restoration of geothermal areas, to prevent damage to and waste from underground geothermal deposits, and to prevent damage to underground and surface waters, land or air that may result from improper drilling, operation, maintenance or abandonment of geothermal resource wells.

(2) In order to implement the terms and provisions of this chapter, the department under the provisions of chapter 34.04 RCW, as now or hereafter amended, may from time to time promulgate those rules and regulations necessary to carry out the purposes of this chapter, including but not restricted to defining geothermal areas; establishing security requirements, which may

include bonding; providing for liens against production; providing for casing and safety device requirements; providing for site restoration plans to be completed prior to abandonment; and providing for abandonment requirements. [1974 1st ex.s. c 43 § 5.]

79.76.060 Scope of chapter. This chapter is intended to preempt local regulation of the drilling and operation of wells for geothermal resources but shall not be construed to permit the locating of any well or drilling when such well or drilling is prohibited under state or local land use law or regulations promulgated thereunder. Geothermal resources, byproducts and/or waste products which have escaped or been released from the energy transfer system and/or a mineral recovery process shall be subject to provisions of state law relating to the pollution of ground or surface waters (Title 90 RCW), provisions of the state fisheries law (Title 75 RCW), and the state game laws (Title 77 RCW), and any other state environmental pollution control laws. Authorization for use of byproduct water resources for all beneficial uses, including but not limited to greenhouse heating, warm water fish propagation, space heating plants, irrigation, swimming pools, and hot springs baths, shall be subject to the appropriation procedure as provided in Title 90 RCW. [1974 1st ex.s. c 43 § 6.]

79.76.070 Drilling permits—Applications—Hearing—Fees. (1) Any person proposing to drill a well or redrill an abandoned well for geothermal resources shall file with the department a written application for a permit to commence such drilling or redrilling on a form prescribed by the department accompanied by a permit fee of two hundred dollars. The department shall forward a duplicate copy to the department of ecology within ten days of filing.

(2) Upon receipt of a proper application relating to drilling or redrilling the department shall set a date, time, and place for a public hearing on the application, which hearing shall be in the county in which the drilling or redrilling is proposed to be made, and shall instruct the applicant to publish notices of such application and hearing by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the drilling or redrilling is proposed to be made and in such other appropriate information media as the department may direct.

(3) Any person proposing to drill a core hole for the purpose of gathering geothermal data, including but not restricted to heat flow, temperature gradients, and rock conductivity, shall be required to obtain a single permit for each geothermal area according to subsection (1) of this section, except that no permit fee shall be required, no notice need be published, and no hearing need be held. Such core holes that penetrate more than seven hundred and fifty feet into bedrock shall be deemed geothermal test wells and subject to the payment of a permit fee and to the requirement in subsection (2) of this section for public notices and hearing. In the event

geothermal energy is discovered in a core hole, the hole shall be deemed a geothermal well and subject to the permit fee, notices, and hearing. Such core holes as described by this subsection are subject to all other provisions of this chapter, including a bond or other security as specified in RCW 79.76.130.

(4) All moneys paid to the department under this section shall be deposited with the state treasurer for credit to the general fund. [1974 1st ex.s. c 43 § 7.]

79.76.080 Drilling permits—Criteria for granting.

A permit shall be granted only if the department is satisfied that the area is suitable for the activities applied for; that the applicant will be able to comply with the provisions of this chapter and the rules and regulations enacted hereunder; and that a permit would be in the best interests of the state.

The department shall not allow operation of a well under permit if it finds that the operation of any well will unreasonably decrease ground water available for prior water rights in any aquifer or other ground water source for water for beneficial uses, unless such affected water rights are acquired by condemnation, purchase or other means.

The department shall have the authority to condition the permit as it deems necessary to carry out the provisions of this chapter, including but not limited to conditions to reduce any environmental impact.

The department shall forward a copy of the permit to the department of ecology within five days of issuance. [1974 1st ex.s. c 43 § 8.]

79.76.090 Casing requirements. Any operator engaged in drilling or operating a well for geothermal resources shall equip such well with casing of sufficient strength and with such safety devices as may be necessary, in accordance with methods approved by the department.

No person shall remove a casing, or any portion thereof, from any well without prior approval of the department. [1974 1st ex.s. c 43 § 9.]

79.76.100 Plugging and abandonment of wells—Transfer of jurisdiction to department of ecology. Any well drilled under authority of this chapter from which:

(1) It is not technologically practical to derive the energy to produce electricity commercially, or the owner or operator has no intention of deriving energy to produce electricity commercially, and

(2) Usable minerals cannot be derived, or the owner or operator has no intention of deriving usable minerals, shall be plugged and abandoned as provided in this chapter or, upon the owner's or operator's written application to the department of natural resources and with the concurrence and approval of the department of ecology, jurisdiction over the well may be transferred to the department of ecology and, in such case, the well shall no longer be subject to the provisions of this chapter but shall be subject to any applicable laws and regulations relating to wells drilled for appropriation and use of ground waters. If an application is made to

transfer jurisdiction, a copy of all logs, records, histories, and descriptions shall be provided to the department of ecology by the applicant. [1974 1st ex.s. c 43 § 10.]

79.76.110 Suspension of drilling, shut-in or removal of equipment for authorized period—Unlawful abandonment. (1) The department may authorize the operator to suspend drilling operations, shut-in a completed well, or remove equipment from a well for the period stated in the department's written authorization. The period of suspension may be extended by the department upon the operator showing good cause for the granting of such extension.

(2) If drilling operations are not resumed by the operator, or the well is not put into production, upon expiration of the suspension or shut-in permit, an intention to unlawfully abandon shall be presumed.

(3) A well shall also be deemed unlawfully abandoned if, without written approval from the department, drilling equipment is removed.

(4) An unlawful abandonment under this chapter shall be entered in the department records and written notice thereof shall be mailed by registered mail both to such operator at his last known address as disclosed by records of the department and to the operator's surety. The department may thereafter proceed against the operator and his surety. [1974 1st ex.s. c 43 § 11.]

79.76.120 Notification of abandonment or suspension of operations—Required—Procedure. (1) Before any operation to plug and abandon or suspend the operation of any well is commenced, the owner or operator shall submit in writing a notification of abandonment or suspension of operations to the department for approval. No operation to abandon or suspend the operation of a well shall commence without approval by the department. The department shall respond to such notification in writing within ten working days following receipt of the notification.

(2) Failure to abandon or suspend operations in accordance with the method approved by the department shall constitute a violation of this chapter, and the department shall take appropriate action under the provisions of RCW 79.76.270. [1974 1st ex.s. c 43 § 12.]

79.76.130 Performance bond or other security—Required. Every operator who engages in the drilling, redrilling, or deepening of any well shall file with the department a reasonable bond or bonds with good and sufficient surety, or the equivalent thereof, acceptable to the department, conditioned on compliance with the provisions of this chapter and all rules and regulations and permit conditions adopted pursuant to this chapter. This performance bond shall be executed in favor of and approved by the department.

In lieu of a bond the operator may file with the department a cash deposit, negotiable securities acceptable to the department, or an assignment of a savings account in a Washington bank on an assignment form prescribed by the department. The department, in its

discretion. may accept a single surety or security arrangement covering more than one well. [1974 1st ex.s. c 43 § 13.]

79.76.140 Termination or cancellation of bond or change in other security, when. The department shall not consent to the termination and cancellation of any bond by the operator, or change as to other security given, until the well or wells for which it has been issued have been properly abandoned or another valid bond for such well has been submitted and approved by the department. A well is properly abandoned when abandonment has been approved by the department. [1974 1st ex.s. c 43 § 14.]

79.76.150 Notification of sale, exchange, etc. The owner or operator of a well shall notify the department in writing within ten days of any sale, assignment, conveyance, exchange, or transfer of any nature which results in any change or addition in the owner or operator of the well on such forms with such information as may be prescribed by the department. [1974 1st ex.s. c 43 § 15.]

79.76.160 Combining orders, unitization programs and well spacing—Authority of department. The department has the authority, through rules and regulations, to promulgate combining orders, unitization programs, and well spacing, and establish proportionate costs among owners or operators for the operation of such units as the result of said combining orders, if good and sufficient reason is demonstrated that such measures are necessary to prevent the waste of geothermal resources. [1974 1st ex.s. c 43 § 16.]

79.76.170 Designation of resident agent for service of process. Each owner or operator of a well shall designate a person who resides in this state as his agent upon whom may be served all legal processes, orders, notices, and directives of the department or any court. [1974 1st ex.s. c 43 § 17.]

79.76.180 General authority of department. The department shall have the authority to conduct or authorize investigations, research, experiments, and demonstrations, cooperate with other governmental and private agencies in making investigations, receive any federal funds, state funds, and other funds and expend them on research programs concerning geothermal resources and their potential development within the state, and to collect and disseminate information relating to geothermal resources in the state: *Provided*, That the department shall not construct or operate commercial geothermal facilities. [1974 1st ex.s. c 43 § 18.]

79.76.190 Employment of personnel. The department shall have the authority, and it shall be its duty, to employ all personnel necessary to carry out the provisions of this chapter pursuant to chapter 41.06 RCW. [1974 1st ex.s. c 43 § 19.]

79.76.200 Drilling records, etc., to be maintained—Inspection—Filing. (1) The owner or operator of any well shall keep or cause to be kept careful and accurate logs, records, descriptions, and histories of the drilling, redrilling, or deepening of the well.

(2) All logs, records, histories, and descriptions referred to in subsection (1) of this section shall be kept in the local office of the owner or operator, and together with other reports of the owner or operator shall be subject during business hours to inspection by the department. Each owner or operator, upon written request from the department, shall file with the department a copy of the logs, records, histories, descriptions, or other records or portions thereof pertaining to the geothermal drilling or operation underway or suspended. [1974 1st ex.s. c 43 § 20.]

79.76.210 Filing of records with department upon completion, abandonment or suspension of operations. Upon completion or plugging and abandonment of any well or upon the suspension of operations conducted with respect to any well for a period of at least six months, one copy of the log, core record, electric log, history, and all other logs and surveys that may have been run on the well, shall be filed with the department within thirty days after such completion, plugging and abandonment, or six months' suspension. [1974 1st ex.s. c 43 § 21.]

79.76.220 Statement of geothermal resources produced—Filing. The owner or operator of any well producing geothermal resources shall file with the department a statement of the geothermal resources produced. Such report shall be submitted on such forms and in such manner as may be prescribed by the department. [1974 1st ex.s. c 43 § 22.]

79.76.230 Confidentiality of records. (1) The records of any owner or operator, when filed with the department as provided in this chapter, shall be confidential and shall be open to inspection only to personnel of the department for the purpose of carrying out the provisions of this chapter and to those authorized in writing by such owner or operator, until the expiration of a twenty-four month confidential period to begin at the date of commencement of production or of abandonment of the well.

(2) Such records shall in no case, except as provided in this chapter, be available as evidence in court proceedings. No officer, employee, or member of the department shall be allowed to give testimony as to the contents of such records, except as provided in this chapter for the review of a decision of the department or in any proceeding initiated for the enforcement of an order of the department, for the enforcement of a lien created by the enforcement of this chapter, or for use as evidence in criminal proceedings arising out of such records or the statements upon which they are based. [1974 1st ex.s. c 43 § 23.]

79.76.240 Removal, destruction, alteration, etc., of records prohibited. No person shall, for the purpose of evading the provision of this chapter or any rule, regulation or order of the department made thereunder, remove from this state, or destroy, mutilate, alter or falsify any such record, account, or writing. [1974 1st ex.s. c 43 § 24.]

79.76.250 Violations—Modification of permit, when necessary—Departmental order—Issuance—Appeal. Whenever it appears with probable cause to the department that:

(1) A violation of any provision of this chapter, regulation adopted pursuant thereto, or condition of a permit issued pursuant to this chapter has occurred or is about to occur, or

(2) That a modification of a permit is deemed necessary to carry out the purpose of this chapter, the department shall issue a written order in person to the operator or his employees or agents, or by certified mail, concerning the drilling, testing, or other operation conducted with respect to any well drilled, in the process of being drilled, or in the process of being abandoned or in the process of reclamation or restoration, and the operator, owner, or designated agent of either shall comply with the terms of the order and may appeal from the order in the manner provided for in RCW 79.76.280. When the department deems necessary the order may include a shutdown order to remain in effect until the deficiency is corrected. [1974 1st ex.s. c 43 § 25.]

79.76.260 Liability in damages for violations—Procedure. Any person who violates any of the provisions of this chapter, or fails to perform any duty imposed by this chapter, or violates an order or other determination of the department made pursuant to the provisions of this chapter, and in the course thereof causes the death of, or injury to, fish, animals, vegetation or other resources of the state, shall be liable to pay the state damages including an amount equal to the sum of money necessary to restock such waters, replenish such resources, and otherwise restore the stream, lake, other water source, or land to its condition prior to the injury, as such condition is determined by the department. Such damages shall be recoverable in an action brought by the attorney general on behalf of the people of the state of Washington in the superior court of the county in which such damages occurred: *Provided*, That if damages occurred in more than one county the attorney general may bring action in any of the counties where the damage occurred. Any moneys so recovered by the attorney general shall be transferred to the department under whose jurisdiction the damaged resource occurs, for the purposes of restoring the resource. [1974 1st ex.s. c 43 § 26.]

79.76.270 Injunctions—Restraining orders. Whenever it shall appear that any person is violating any provision of this chapter, or any rule, regulation, or order made by the department hereunder, and if the department cannot, without litigation, effectively prevent

further violation, the department may bring suit in the name of the state against such person in the court in the county of the residence of the defendant, or in the county of the residence of any defendant if there be more than one defendant, or in the county where the violation is alleged to have occurred, to restrain such person from continuing such violation. In such suit the department may, without bond, obtain injunctions prohibitory and mandatory, including temporary restraining orders and preliminary injunctions, as the facts may warrant. [1974 1st ex.s. c 43 § 27.]

79.76.280 Judicial review. (1) Any person adversely affected by any rule, regulation, order, or permit entered by the department pursuant to this chapter may obtain judicial review thereof in accordance with the applicable provisions of chapter 34.04 RCW.

(2) The court having jurisdiction, insofar as is practicable, shall give precedence to proceedings for judicial review brought under this chapter. [1974 1st ex.s. c 43 § 28.]

79.76.290 Violations—Penalty. Violation of any provision of this chapter or of any rule, regulation, order of the department, or condition of any permit made hereunder is punishable, upon conviction, by a fine of not more than two thousand five hundred dollars or by imprisonment in the county jail for not more than six months, or both. [1974 1st ex.s. c 43 § 29.]

79.76.300 Aiding or abetting violations. No person shall knowingly aid or abet any other person in the violation of any provision of this chapter or of any rule, regulation or order of the department made hereunder. [1974 1st ex.s. c 43 § 30.]

79.76.900 Severability—1974 1st ex.s. c 43. If any provision of this 1974 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1974 1st ex.s. c 43 § 32.]

SUBJECT INDEX—PUBLIC LAND ACTS OF SPECIAL OR HISTORICAL NATURE NOT CODIFIED IN RCW

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	1907	191
American Lake	1907	197
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Bentley, W.C.	1921	38
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	Year	Chapter		Year	Chapter
Camp Murray, conveyance for aerospace science and modeling center	1969 ex.s.	85	Great Northern RR	1935	50
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	1893	138		1935	53
	1901	45		1939	159
Capitol Buildings	1909 ex.s.	20		1941	117
	1911	59 ²	Harbor lines at Anacortes, Aberdeen, Hoquiam, Cosmopolis, Bellingham, Port Angeles, Renton, Seattle, Tacoma, Olympia, Kalama, Bremerton, Port Orchard, relocation	1963	139
	1913	50		1967 ex.s.	24
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	1925	27	Harbor lines in Lake Union, Salmon Bay, Union Bay, Commencement Bay, relocation	1967 ex.s.	24
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	1945	47	Hollingsworth, Howard C	1919	198
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	1935	52	Island County	1931	12
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Cheney	1949	35	Jefferson County	1941	121
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	1941	94	King County	1933	99
	1945	207		1935	49
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Clark County, state school for the deaf, conveyance of portion	1969 ex.s.	62		1945	119
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	1919	75	King County, unplatted tidelands deeded to state board for community college education; reversion	1971 ex.s.	241
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	1905	28	Kitsap County	1931	86
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Colville	1939	144	Kitsap County, sewer disposal plant to county sewer district No. 5	1965	95
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DesChutes Waterway	1939	76	Land Commission	1889-90	...
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Eastern Washington College of Ed.	1949	35		1919	44
	1959	128	Mason County	1935	104
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Fairmont Cemetery Association	1939	20	Mason County, Cemetery District No. 1, deeding of authorized	1971 ex.s.	90
Ferry County, Curlew	1917	86	Mason County, exchange of forest trust land	1973	26
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	Year	Chapter		Year	Chapter
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Northern State Hospital at Sedro			Park—Recreation area	1971	50
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erty	1974 1st ex.s.	178	ty	1959	72
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	{ 1907	17	land	1959	63
	{ 1917	144	State parks, Mayfield Lake State		
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	{ 1949	37	Tacoma Scouts	1935	104
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	{ 1909	221	county	1971 ex.s.	228
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	{ 1927	267	munity college education;		
	{ 1929	177	reversion	1971 ex.s.	241
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	{ 1939	77	Vancouver	{ 1909	95
	{ 1949	81		{ 1933 ex.s.	42
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Skamania County	1937	91	ance of	1965	115
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ex.s. denotes extraordinary session.

¹Section 1 is codified as RCW 79.24.020 and section 10 as RCW 79-24.090, repealed by 1959 c 257 § 48

²Section 9 is codified as RCW 79.24.040, repealed by 1959 c 257 § 48; section 10 as RCW 79.24.060; section 11 as RCW 79.24.070, repealed by 1959 c 257 § 48; and section 12 as RCW 79.24.030.

CERTIFICATE

This volume, published officially by the Statute Law Committee, is, in accordance with the provisions of RCW 1.08.037, certified to comply with the current specifications of the committee.

(signed)

ROBERT L. CHARETTE, *Chairman*,
STATUTE LAW COMMITTEE.

NOTES