

1976
REVISED CODE
of
WASHINGTON



Volume 6

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TITLE 68

CEMETERIES, MORGUES AND HUMAN REMAINS

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68.04.020 "Human remains", "remains" defined. "Human remains" or "remains" means the body of a deceased person, and includes the body in any stage of decomposition and cremated remains. [1943 c 247 § 2; Rem. Supp. 1943 § 3778–2.]

Short title—1943 c 247: "This act shall be known as the 'General Cemetery Act.'" [1943 c 247 § 1.]

Severability—1943 c 247: "If any section, subdivision, sentence or clause of this act shall be held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of this act." [1943 c 247 § 147.]

The foregoing annotations apply to 1943 c 247, the general cemetery act, codified herein as follows: RCW 68.04.010 through 68.04.240, 68.08.010 through 68.08.030, 68.08.120 through 68.08.220, 68.08.240, 68.20.010 through 68.20.100, 68.24.010 through 68.24.180, 68.28.010 through 68.28.070, 68.32.010 through 68.32.170, 68.36.010 through 68.36.100, 68.40.010 through 68.40.090, 68.44.010 through 68.44.170, and 68.48.040 through 68.48.090.

68.04.030 "Cremated remains". "Cremated remains" means human remains after cremation in a crematory. [1943 c 247 § 3; Rem. Supp. 1943 § 3778–3.]

68.04.040 "Cemetery". "Cemetery" means any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes:

- (1) A burial park, for earth interments.
- (2) A mausoleum, for crypt or vault interments.
- (3) A columbarium, for permanent cinerary interments. [1943 c 247 § 4; Rem. Supp. § 3778–4.]

68.04.050 "Burial park". "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes. [1943 c 247 § 5; Rem. Supp. 1943 § 3778–5.]

68.04.060 "Mausoleum". "Mausoleum" means a structure or building for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated, for cemetery purposes. [1943 c 247 § 6; Rem. Supp. 1943 § 3778–6.]

68.04.070 "Crematory". "Crematory" means a building or structure containing one or more retorts for

the reduction of bodies of deceased persons to cremated remains. [1943 c 247 § 7; Rem. Supp. 1943 § 3778-7.]

68.04.080 "Columbarium". "Columbarium" means a structure, room, or other space in a building or structure containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated, for cemetery purposes. [1943 c 247 § 8; Rem. Supp. 1943 § 3778-8.]

68.04.090 "Crematory and columbarium". "Crematory and columbarium" means a building or structure containing both a crematory and columbarium. [1943 c 247 § 9; Rem. Supp. 1943 § 3778-9.]

68.04.100 "Interment". "Interment" means the disposition of human remains by cremation and inurnment, entombment, or burial in a place used, or intended to be used, and dedicated, for cemetery purposes. [1943 c 247 § 10; Rem. Supp. 1943 § 3778-10.]

68.04.110 "Cremation". "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory. [1943 c 247 § 11; Rem. Supp. 1943 § 3778-11.]

68.04.120 "Inurnment". "Inurnment" means placing cremated remains in an urn or vault and placing it in a niche. [1943 c 247 § 12; Rem. Supp. 1943 § 3778-12.]

68.04.130 "Entombment". "Entombment" means the placement of human remains in a crypt or vault. [1943 c 247 § 13; Rem. Supp. 1943 § 3778-13.]

68.04.140 "Burial". "Burial" means the placement of human remains in a grave. [1943 c 247 § 14; Rem. Supp. 1943 § 3778-14.]

68.04.150 "Grave". "Grave" means a space of ground in a burial park, used or intended to be used, for burial. [1943 c 247 § 15; Rem. Supp. 1943 § 3778-15.]

68.04.160 "Crypt", "vault". "Crypt" or "vault" means a space in a mausoleum of sufficient size, used or intended to be used, to entomb uncremated human remains. [1943 c 247 § 16; Rem. Supp. 1943 § 3778-16.]

68.04.170 "Niche". "Niche" means a space in a columbarium or urn garden used, or intended to be used, for inurnment of cremated human remains. [1943 c 247 § 17; Rem. Supp. 1943 § 3778-17.]

68.04.180 "Temporary receiving vault". "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains. [1943 c 247 § 18; Rem. Supp. 1943 § 3778-18.]

68.04.190 "Cemetery authority". "Cemetery authority" includes cemetery corporation, association, corporation sole, or other person owning or controlling cemetery lands or property. [1943 c 247 § 19; Rem. Supp. 1943 § 3778-19.]

68.04.200 "Cemetery corporation", "cemetery association". "Cemetery corporation", "cemetery association", or "cemetery corporation or association" mean any corporation now or hereafter organized which is or may be authorized by its articles to conduct any one or more or all of the businesses of a cemetery, but do not mean or include a corporation sole. [1943 c 247 § 20; Rem. Supp. 1943 § 3778-20.]

68.04.210 "Cemetery business", etc. "Cemetery business", "cemetery businesses", and "cemetery purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or conducting a cemetery, interring human remains, and the care, preservation, and embellishment of cemetery property. [1943 c 247 § 21; Rem. Supp. 1943 § 3778-21.]

68.04.220 "Directors", "governing body". "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association. [1943 c 247 § 22; Rem. Supp. 1943 § 3778-22.]

68.04.230 "Lot", "plot", etc. "Lot", "plot", or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches. [1943 c 247 § 23; Rem. Supp. 1943 § 3778-23.]

68.04.240 "Plot owner", "owner", "lot proprietor". "Plot owner", "owner", or "lot proprietor" means any person in whose name an interment plot stands of record as owner, in the office of a cemetery authority. [1943 c 247 § 24; Rem. Supp. 1943 § 3778-24.]

Chapter 68.05 CEMETERY BOARD

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68.05.010 Definitions. The definitions in chapter 68.04 RCW are applicable to this chapter and govern the meaning of terms used herein, except as otherwise provided expressly or by necessary implication. [1953 c 290 § 26.]

Codification—1953 c 290: "Sections 26 through 55 of this act shall constitute a new chapter under Title 68 RCW." [1953 c 290 § 25.]

Short title—1953 c 290: "This act shall be known as 'The Cemetery Act.'" [1953 c 290 § 55.] The foregoing annotations apply to RCW 68.05.010 through 68.05.280.

68.05.020 "Board" defined. The term "board" used in this chapter means the cemetery board. [1953 c 290 § 27.]

68.05.030 "Endowment care", "endowed care" defined. The terms "endowment care" or "endowed care" used in this chapter shall include both general and special care funds. [1953 c 290 § 28.]

68.05.040 Cemetery board created—Appointments—Terms. A cemetery board is created to consist of five members to be appointed by the governor within thirty days after June 11, 1953. The terms of the members first appointed shall expire: One, January 15, 1954; one, January 15, 1955; one, January 15, 1956; and two, January 15, 1957. Thereafter appointments shall be for a four year term. [1953 c 290 § 31.]

68.05.050 Qualifications of members. Members of the board shall be appointed only from persons who have had, immediately preceding their appointment, a minimum of five consecutive years experience in this state in the active administrative management of a cemetery corporation or as a member of the board of directors thereof for this period and shall at the time of their appointment, have the actual and full authority of a president, general manager, or executive vice president, but they shall hold office only so long as they continue in such active, actual, and authoritative capacity. The five year consecutive period shall be exclusive of time spent in the armed services. [1953 c 290 § 32.]

68.05.060 Travel expenses. Each member of the board shall receive no compensation for his services, but shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter

amended. [1975-'76 2nd ex.s. c 34 § 156; 1953 c 290 § 33.]

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

68.05.070 Officers—Administrative assistant—Employees. The board shall elect annually a chairman and vice chairman and such other officers as it shall determine from among its members. Subject to the provisions of law the board may employ, fix the salaries of and prescribe the duties of, one administrative assistant and such clerical, technical and other employees as are necessary in the carrying out of its duties. [1953 c 290 § 34.]

68.05.080 Meetings. The board shall meet at least twice a year in order to conduct its business and may meet at such other times as it may designate. The board may meet at any place within this state. [1953 c 290 § 35.]

68.05.090 Administration and enforcement of title. The board shall enforce and administer the provisions of chapters 68.04 through 68.44 RCW, subject to provisions of RCW 68.05.280. [1953 c 290 § 39.]

68.05.100 Rules and regulations. The board may establish necessary rules and regulations for the administration and enforcement of this title and the laws subject to its jurisdiction and prescribe the form of statements and reports provided for in this title: *Provided, however,* The board shall have no jurisdiction with regard to the provisions of chapter 68.48 RCW. [1953 c 290 § 36.]

68.05.110 Oaths—Examination. The board may administer oaths, and examine under oath, any person relative to the administration and enforcement of this title. [1953 c 290 § 37.]

68.05.120 Actions to enforce law—Attorney general. The board is authorized to bring actions to enforce the provisions of the law subject to its jurisdiction, in which actions it shall be represented by the attorney general. [1953 c 290 § 38.]

68.05.130 Examination of endowment funds and prearrangement trust funds—Expense. The board shall examine the endowment care and prearrangement trust fund or funds of a cemetery authority:

(1) Within one year after June 11, 1953 and whenever it deems necessary, but at least once every three years after the original examination;

(2) Whenever the cemetery authority in charge of endowment care or prearrangement trust fund or funds fails to file the reports required by this chapter; or

(3) Whenever it is requested by verified petition signed by twenty-five lot owners alleging that the endowment care funds are not in compliance with this title, or whenever it is requested by verified petition signed by twenty-five purchasers or beneficiaries of prearrangement merchandise or services alleging that the

prearrangement trust funds are not in compliance with *this 1973 amendatory act, in either of which cases, the examination shall be at the expense of the petitioners.

(4) The expense of the endowment care examination as provided in subdivisions (1) and (2), not to exceed fifty dollars per day for each examiner engaged in the examination whenever the examination requires more than two days, or the expense of the prearrangement trust examination as provided in subdivisions (1) and (2) of this section, not to exceed one hundred dollars per day for each examiner engaged in the examination shall be paid by the cemetery authority. Such examination shall be privately conducted in the principal office of the cemetery authority. [1973 1st ex.s. c 68 § 12; 1953 c 290 § 42.]

*Reviser's note: "this 1973 amendatory act" [1973 1st ex.s. c 68] consists of chapter 68.46 RCW and the amendments to RCW 68.05-130-68.05.160, 68.05.180 and 68.05.255 by 1973 1st ex.s. c 68.

68.05.140 Examination expense—Effect of refusal to pay—Disposition. If any cemetery authority refuses to pay any examination expenses in advance, the board shall refuse it a certificate of authority and shall revoke any existing certificate of authority. All examination expense moneys collected by the board shall be paid into the state treasury to the credit of the cemetery fund. [1973 1st ex.s. c 68 § 13; 1953 c 290 § 43.]

68.05.150 Powers, duties, concerning examination of funds. In making such examination the board:

(1) Shall have free access to the books and records relating to the endowment care funds, their collection and investment, and the number of graves, crypts and niches under endowment care.

(2) Shall inspect and examine the endowment care funds to determine their condition and the existence of the investments.

(3) Shall ascertain if the cemetery authority has complied with all the laws applicable to endowment care funds.

(4) Shall have free access to all records required to be maintained pursuant to *this 1973 amendatory act with respect to prearrangement merchandise or services.

(5) Shall ascertain if the cemetery authority has complied with the laws applicable to prearrangement trust funds. [1973 1st ex.s. c 68 § 14; 1953 c 290 § 44.]

*Reviser's note: "this 1973 amendatory act", see note following RCW 68.05.130.

68.05.160 Action required when authority fails to deposit minimum endowment amount or comply with prearrangement contracts provisions. If any examination made by the board, or any report filed with it, shows that there has not been collected and deposited in the endowment care funds the minimum amounts required by this title, or if the board finds that the cemetery authority has failed to comply with the requirements of *this 1973 amendatory act with respect to prearrangement contracts, merchandise or services, and/or prearrangement trust funds, the board shall require such cemetery authority to comply with chapter 68.40 RCW

or with *this 1973 amendatory act as the case may be. [1973 1st ex.s. c 68 § 15; 1953 c 290 § 45.]

*Reviser's note: "this 1973 amendatory act", see note following RCW 68.05.130.

68.05.170 Order requiring reinvestment in compliance with title—Actions for preservation and protection. (1) Whenever the board finds, after notice and hearing, that any endowment care funds have been invested in violation of this title, it shall by written order mailed to the person or body in charge of the fund require the reinvestment of the funds in conformity with this title within the period specified by it which shall be not more than six months. Such period may be extended by the board in its discretion.

(2) The board may bring actions for the preservation and protection of endowment care funds in the superior court of the county in which the cemetery is located and the court shall appoint substitute trustees and make any other order which may be necessary for the preservation, protection and recovery of endowment care funds, whenever a cemetery authority or the trustees of its fund have:

(a) transferred or attempted to transfer any property to, or made any loan from, the endowment care funds for the benefit of the cemetery authority or any director, officer, agent or employee of the cemetery authority or trustee of any endowment care funds; or,

(b) failed to reinvest endowment care funds in accordance with a board order issued under subsection one of this section; or,

(c) invested endowment care funds in violation of this title; or,

(d) taken action or failed to take action to preserve and protect the endowment care funds, evidencing a lack of concern therefor; or,

(e) become financially irresponsible or transferred control of the cemetery authority to any person who, or business entity which, is financially irresponsible; or,

(f) is in danger of becoming insolvent or has gone into bankruptcy or receivership; or,

(g) taken any action in violation of Title 68 RCW or failed to take action required by Title 68 RCW or has failed to comply with lawful rules, regulations and orders of the board.

(3) Whenever the board has reason to believe that endowment care funds are in danger of being lost or dissipated during the time required for notice and hearing, it may immediately apply to the superior court of the county in which the cemetery is located for any order which appears necessary for the preservation and protection of endowment care funds, including, but not limited to, immediate substitutions of trustees. [1969 ex.s. c 99 § 1; 1953 c 290 § 46.]

68.05.180 Annual report of authority—Contents—Verification—Certification. Each cemetery authority in charge of cemetery endowment care funds shall file with the board annually, on or before the thirtieth day of June, a written report in form prescribed by the board setting forth:

(1) The number of square feet of grave space and the number of crypts and niches sold or disposed of under endowment care:

(a) From June 12, 1943, to the first day of January of the year preceding the filing of this report.

(b) From the first day of January through the thirty-first day of December of the preceding year.

(2) The amount collected and deposited in both the general and special endowment care funds:

(a) Prior to June 12, 1943.

(b) From June 12, 1943, to the first day of January preceding the filing of this report.

(c) From the first day of January through the thirty-first day of December of the preceding year segregated as to the amounts deposited for crypts, niches, and grave space.

(3) A statement showing the total amount of the general and special endowment care funds invested in each of the investments authorized by law and the amount of cash on hand not invested, which statement shall show the actual financial condition of the funds.

(4) A statement showing the information required to be filed pursuant to RCW 68.46.090.

These reports shall be verified by the president or vice president and one other officer of the cemetery authority and shall be certified by the accountant or auditor preparing the same. [1973 1st ex.s. c 68 § 16; 1953 c 290 § 40.]

68.05.190 Examination of reports. The board shall examine the reports filed with it as to their compliance with the requirements of the law. [1953 c 290 § 41.]

68.05.200 Application for certificate of authority. Applications in writing for a certificate of authority shall be made by a cemetery authority to the board accompanied by the regulatory charge provided for in this title. Such application must show that the cemetery authority owns or is actively operating a cemetery which is subject to the provisions of this title. [1953 c 290 § 47.]

68.05.210 Proof of applicant's compliance with law, rules, etc., financial responsibility and reputation. The board may require such proof as it deems advisable concerning the compliance by such applicant to all the laws, rules, regulations, ordinances and orders applicable to it. The board shall also require proof that the applicant and its officers and directors are financially responsible, trustworthy and have good personal and business reputations, in order that only cemeteries of permanent benefit to the community in which they are located will be established in this state. [1969 ex.s. c 99 § 2; 1953 c 290 § 48.]

68.05.220 Certificates—Regulatory charges, when payable—Duration—Suspension, restoration—Transferability. The regulatory charges for cemetery certificates at all periods of the year are the same as provided in this chapter. All regulatory charges are payable at the time of the filing of the application and in advance of the issuance of the certificates. All certificates shall be issued for the year and shall expire at

midnight, the thirtieth day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority is transferred or sold. Cemetery certificates shall not be transferable. Failure to pay the regulatory charge fixed by the board prior to the first day of February for any year automatically shall suspend the certificate of authority. Such certificate may be restored upon payment to the board of the prescribed charges. [1969 ex.s. c 99 § 3; 1953 c 290 § 50.]

68.05.230 Regulatory charges—Rate. Every cemetery authority shall pay for each cemetery operated by it, an annual regulatory charge to be fixed by the board, based on the number of interments, entombments and inurnments made during the preceding full calendar year, but not exceeding twenty-five dollars for one hundred or less, fifty dollars for one hundred one to three hundred fifty, seventy-five dollars for three hundred fifty-one to seven hundred, one hundred dollars for seven hundred one or more; plus an additional charge of not more than fifty cents per interment, entombment and inurnment made during the preceding full calendar year, which charges shall be deposited in the cemetery account. Upon payment of said charges and compliance with the provisions of Title 68 RCW and the lawful orders, rules and regulations of the board, the board will issue a certificate of authority. [1969 ex.s. c 99 § 4; 1953 c 290 § 51.]

68.05.240 Interment, certificate of authority required—Penalty. It shall be a misdemeanor for any cemetery authority to make any interment without a valid, subsisting, and unsuspended certificate of authority. Each interment shall be a separate violation. [1953 c 290 § 52.]

68.05.250 Revocation, suspension of certificate. Upon violation of any of the provisions of this title, the board may revoke or suspend the certificate of authority of any cemetery authority. [1953 c 290 § 49.]

68.05.255 Sale or transfer of cemetery authority—Application for new certificate of authority—Compliance required—Penalty. Prior to the sale or transfer of ownership or control of any cemetery authority, any person, corporation or other legal entity desiring to acquire such ownership or control shall apply in writing for a new certificate of authority to operate a cemetery and shall comply with all provisions of Title 68 RCW relating to applications for, and the basis for granting, an original certificate of authority. The board shall, in addition, enter any order deemed necessary for the protection of all endowment care funds and/or prearrangement trust fund during such transfer. Persons and business entities selling and persons and business entities purchasing ownership or control of a cemetery authority shall each file an endowment care fund report and/or a prearrangement trust fund report showing the status of such funds immediately before and immediately after such transfer on a written report form prescribed by the board. Failure to comply with this section shall be a gross misdemeanor and any sale or transfer in violation

of this section shall be void. [1973 1st ex.s. c 68 § 17; 1969 ex.s. c 99 § 5.]

68.05.260 Unlawful to refuse burial to nonCaucasian.

It shall be unlawful for any cemetery under this chapter to refuse burial to any person because such person may not be of the Caucasian race. [1953 c 290 § 53.]

Reviser's note: RCW 68.05.260 was declared unconstitutional in *Price v. Evergreen Cemetery Co. of Seattle* (1960) 157 Wash. Dec. 249.

68.05.270 "Cemetery fund". There shall be, in the office of the state treasurer, a fund to be known and designated as the "cemetery fund." All regulatory fees or other moneys to be paid under this chapter, unless provision be made otherwise, shall be paid at least once a month to the state treasurer to be credited to the cemetery fund. All moneys credited to the cemetery fund shall be used, when appropriated by the legislature, by the cemetery board to carry out the provisions of this chapter. [1953 c 290 § 29.]

Cemetery fund abolished and moneys transferred to cemetery account in state general fund: RCW 43.79.330 through 43.79.334.

68.05.280 Exemptions from chapter. The provisions of this chapter do not apply to any of the following: Any religious corporation, church, coroner, religious society or denomination, a corporation sole administering temporalities of any church or religious society or denomination, or any cemetery organized, controlled, and operated by any of them, any county, town, or city cemetery. [1961 c 133 § 1; 1953 c 290 § 30.]

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68.08.010 Coroner's jurisdiction over remains. The jurisdiction of bodies of all deceased persons who come to their death suddenly when in apparent good health without medical attendance within the thirty-six hours preceding death; or where the circumstances of death indicate death was caused by unnatural or unlawful means; or where death occurs under suspicious circumstances; or where a coroner's autopsy or post mortem or coroner's inquest is to be held; or where death results from unknown or obscure causes, or where death occurs within one year following an accident; or where the death is caused by any violence whatsoever, or where death results from a known or suspected abortion; whether self-induced or otherwise; where death apparently results from drowning, hanging, burns, electrocution, gunshot wounds, stabs or cuts, lightning, starvation, radiation, exposure, alcoholism, narcotics or other addictions, tetanus, strangulations, suffocation or smothering; or where death is due to premature birth or still birth; or where death is due to a violent contagious disease or suspected contagious disease which may be a public health hazard; or where death results from alleged rape, carnal knowledge or sodomy, where death occurs in a jail or prison; where a body is found dead or is not claimed by relatives or friends, is hereby vested in the county coroner, which bodies may be removed and

placed in the morgue under such rules as are adopted by the coroner with the approval of the county commissioners, having jurisdiction, providing therein how the bodies shall be brought to and cared for at the morgue and held for the proper identification where necessary. [1963 c 178 § 1; 1953 c 188 § 1; 1917 c 90 § 3; RRS § 6042.]

68.08.020 Notice to coroner—Penalty. It shall be the duty of every person who knows of the existence and location of a dead body coming under the jurisdiction of the coroner as set forth in RCW 68.08.010, to notify the coroner thereof in the most expeditious manner possible, unless such person shall have good reason to believe that such notice has already been given. Any person knowing of the existence of such dead body and not having good reason to believe that the coroner has notice thereof and who shall fail to give notice to the coroner as aforesaid, shall be guilty of a misdemeanor. [1917 c 90 § 4; RRS § 6043.]

68.08.030 Free care and delivery of remains. No charge shall be made for the removal to or care of any body while in the morgue and upon the request of relatives or friends the body after investigation shall be delivered to the friends at any point in the city without charge. [1917 c 90 § 5; RRS § 6044.]

68.08.040 Deceased's effects to be listed. Duplicate lists of all jewelry, moneys, papers, and other personal property of the deceased shall be made immediately upon finding the same by the coroner or his assistants. The original of such lists shall be kept as a public record at the morgue and the duplicate thereof shall be forthwith duly certified to by the coroner and filed with the county auditor. [1917 c 90 § 6; RRS § 6045.]

68.08.050 Removal or concealment of body—Penalty. Any person, not authorized by the coroner or his deputies, who removes the body of a deceased person not claimed by a relative or friend, or who came to their death by reason of violence or from unnatural causes or where there shall exist reasonable grounds for the belief that such death has been caused by unlawful means at the hands of another, to any undertaking rooms or elsewhere, or any person who directs, aids or abets such taking, and any person who in any way conceals the body of a deceased person for the purpose of taking the same to any undertaking rooms or elsewhere, shall in each of said cases be guilty of a gross misdemeanor and upon conviction thereof shall be punished by fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year or by both fine and imprisonment in the discretion of the court. [1917 c 90 § 7; RRS § 6046.]

68.08.060 Bodies for instruction purposes. Any physician or surgeon of this state, or any medical student under the authority of any such physician or surgeon, may obtain, as hereinafter provided, and have in his possession human dead bodies, or the parts thereof, for the purposes of anatomical inquiry or instruction. [1891 c 123 § 1; RRS § 10026.]

68.08.070 Bodies, when may be used for dissection. Any sheriff, coroner, keeper or superintendent of a county poorhouse, public hospital, county jail, or state institution shall surrender the dead bodies of persons required to be buried at the public expense, to any physician or surgeon, to be by him used for the advancement of anatomical science, preference being given to medical schools in this state, for their use in the instruction of medical students. If the deceased person during his last sickness requested to be buried, or if within thirty days after his death some person claiming to be a relative or a responsible officer of a church organization with which the deceased at the time of his death was affiliated requires the body to be buried, his body shall be buried. [1959 c 23 § 1; 1953 c 224 § 2; 1891 c 123 § 2; RRS § 10027.]

68.08.080 Certificate and bond before receiving bodies. Every physician or surgeon before receiving the dead body must give to the board or officer surrendering the same to him a certificate from the medical society of the county in which he resides, or if there is none, from the board of supervisors of the same, that he is a fit person to receive such dead body. He must also give a bond with two sureties, that each body so by him received will be used only for the promotion of anatomical science, and that it will be used for such purpose in this state only, and so as in no event to outrage the public feeling. [1891 c 123 § 3; RRS § 10028.]

68.08.090 Penalty. Any person violating any provision of RCW 68.08.060 through 68.08.080 shall upon conviction thereof be fined in any sum not exceeding five hundred dollars. [1891 c 123 § 4; RRS § 10029.]

68.08.100 Dissection, when permitted—Autopsy of person under the age of three years. The right to dissect a dead body shall be limited to cases specially provided by statute or by the direction or will of the deceased; cases where a coroner is authorized to hold an inquest upon the body, and then only as he may authorize dissection; and cases where the spouse or next of kin charged by law with the duty of burial shall authorize dissection for the purpose of ascertaining the cause of death, and then only to the extent so authorized: *Provided*, That the coroner, in his discretion, may make or cause to be made by a competent pathologist, toxicologist, or physician, an autopsy or post mortem in any case in which the coroner has jurisdiction of a body: *Provided, further*, That the coroner may with the approval of the University of Washington and with the consent of a parent or guardian deliver any body of a deceased person under the age of three years over which he has jurisdiction to the University of Washington medical school for the purpose of having an autopsy made to determine the cause of death. Every person who shall make, cause, or procure to be made any dissection of a body, except as above provided, shall be guilty of a gross misdemeanor. [1963 c 178 § 2; 1953 c 188 § 2; 1909 c 249 § 237; RRS § 2489.]

68.08.101 Autopsy, post mortem—Persons responsible for burial may authorize. Autopsy or post mortem may be performed in any case in which the deceased's spouse, parent, child, brother or sister, or any other kin or person having the responsibility for burial may authorize the autopsy or post mortem to be performed. [1953 c 188 § 11.]

68.08.102 Court petition for autopsy—Cost. Any party by showing just cause may petition the court to have autopsy made and results thereof made known to said party at his own expense. [1953 c 188 § 12.]

68.08.103 Autopsies in industrial deaths. In an industrial death where the cause of death is unknown, and where the department of labor and industries is concerned, said department in its discretion, may request the coroner in writing to perform an autopsy to determine the cause of death. The coroner shall be required to promptly perform such autopsy upon receipt of the written request from the department of labor and industries. [1953 c 188 § 6.]

68.08.104 Cost of autopsy. The cost of autopsy shall be borne by the county in which the autopsy is performed, except when requested by the department of labor and industries, in which case, the said department shall bear the cost of such autopsy; and except when performed on a body of an infant under the age of three years by the University of Washington medical school, in which case the medical school shall bear the cost of such autopsy. [1963 c 178 § 3; 1953 c 188 § 7.]

68.08.105 Autopsies, post mortems—Reports and records confidential—Exceptions. Reports and records of autopsies or post mortems shall be confidential, except to the prosecuting attorney or law enforcement agencies having jurisdiction, or to the department of labor and industries in cases in which it has requested the autopsy. [1953 c 188 § 9.]

68.08.106 Autopsies, post mortems—Analyses—Opinions—Evidence—Costs. In any case in which an autopsy or post mortem is performed, the coroner or medical examiner, upon his own authority or upon the request of the prosecuting attorney or other law enforcement agency having jurisdiction, may make or cause to be made an analysis of the stomach contents, blood, or organs, or tissues of a deceased person and secure professional opinions thereon and retain or dispose of any specimens or organs of the deceased which in his discretion are desirable or needful for anatomic, bacteriological, chemical, or toxicological examination or upon lawful request are needed or desired for evidence to be presented in court. When the autopsy or post mortem requires examination in the region of the pituitary gland, that gland may be removed and utilized for any desirable or needful purpose: *Provided*, That a reasonable effort to obtain consent as required under RCW 68.08-.510 shall be made if that organ is to be so utilized. Costs shall be borne by the county. [1975-'76 2nd ex.s. c 28 § 1; 1953 c 188 § 10.]

68.08.107 State toxicological laboratory established—State toxicologist—Washington State University police school. There shall be established at the University of Washington Medical School a state toxicological laboratory under the direction of the state toxicologist whose duty it will be to perform all necessary toxicologic procedures requested by all coroners and prosecuting attorneys. Annually the president of the University of Washington shall appoint a competent toxicologist as state toxicologist who shall serve a one year term. The state toxicologist may be reappointed to as many additional one year terms as the president of the university in his discretion deems proper. The facilities of the police school of the Washington State University and the services of its professional staff shall be made available to the coroners and the prosecuting attorneys in their investigations under this chapter. This laboratory shall be deemed to be within the meaning of medical and biological research as defined in RCW 66.08.180, and funds for this purpose not to exceed one hundred fifty thousand dollars per biennium shall be provided for salaries and operations of said laboratory, and the funds so provided shall take priority over disbursements of any other sums from said medical and biological research fund. [1975-'76 2nd ex.s. c 84 § 1; 1970 ex.s. c 24 § 1; 1953 c 188 § 13.]

Liquor revolving fund distribution: "Of the sums derived from class H licenses or class H licensees which are to be distributed pursuant to RCW 66.08.180, eighty-five thousand dollars shall be provided for the operation of the state toxicological laboratory in the biennium ending June 30, 1971." [1970 ex.s. c 24 § 2.]

68.08.108 Autopsies, post mortems—Consent to embalm or cremate body—Time limitation. No dead body upon which the coroner, or prosecuting attorney, if there be no coroner in the county, may perform an autopsy or post mortem, shall be embalmed or cremated without the consent of the coroner having jurisdiction, and failure to obtain such consent shall be a misdemeanor: *Provided*, That such autopsy or post mortem must be performed within five days, unless the coroner shall obtain an order from the superior court extending such time. [1953 c 188 § 8.]

68.08.110 Burial or cremating. Except in cases of dissection provided for in RCW 68.08.100, and where a dead body shall rightfully be carried through or removed from the state for the purpose of burial elsewhere, every dead body of a human being lying within this state, and the remains of any dissected body, after dissection, shall be decently buried, or cremated within a reasonable time after death. [1909 c 249 § 238; RRS § 2490.]

68.08.120 Holding body for debt—Penalty. Every person who arrests, attaches, detains, or claims to detain any human remains for any debt or demand, or upon any pretended lien or charge, is guilty of a gross misdemeanor. [1943 c 247 § 27; Rem. Supp. 1943 § 3778-27.]

68.08.130 Unlawful disposal of remains. Every person who permanently deposits or disposes of any human remains, except as otherwise provided by law, in any

place, except in a cemetery or a building dedicated exclusively for religious purposes, is guilty of a misdemeanor. [1943 c 247 § 28; Rem. Supp. 1943 § 3778-28.]

68.08.140 Opening graves—Stealing body—Receiving same. Every person who shall remove the dead body of a human being, or any part thereof, from a grave, vault, or other place where the same has been buried or deposited awaiting burial or cremation, without authority of law, with intent to sell the same, or for the purpose of securing a reward for its return, or for dissection, or from malice or wantonness, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars, or by both.

Every person who shall purchase or receive, except for burial or cremation, any such dead body, or any part thereof, knowing that the same has been removed contrary to the foregoing provisions, shall be punished by imprisonment in the state penitentiary for not more than three years, or by a fine of not more than one thousand dollars, or by both.

Every person who shall open a grave or other place of interment, temporary or otherwise, or a building where such dead body is deposited while awaiting burial or cremation, with intent to remove said body or any part thereof, for the purpose of selling or demanding money for the same, for dissection, from malice or wantonness, or with intent to sell or remove the coffin or of any part thereof, or anything attached thereto, or any vestment, or other article interred, or intended to be interred with the body, shall be punished by imprisonment in the state penitentiary for not more than three years, or by a fine of not more than one thousand dollars, or by both. [1909 c 249 § 239; RRS § 2491. FORMER PART OF SECTION: 1943 c 247 § 25 now codified as RCW 68.08.145.]

68.08.145 Removing remains—Penalty. Every person who removes any part of any human remains from any place where it has been interred, or from any place where it is deposited while awaiting interment, with intent to sell it, or to dissect it, without authority of law, or from malice or wantonness, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars, or by both. [1943 c 247 § 25; Rem. Supp. 1943 c 3778-25. Formerly RCW 68.08.140, part.]

68.08.150 Mutilating, disinterring human remains—Penalty. Every person who mutilates, disinters, or removes from the place of interment any human remains without authority of law, shall be punished by imprisonment in the state penitentiary for not more than three years, or by a fine of not more than one thousand dollars, or by both. [1943 c 247 § 26; Rem. Supp. 1943 § 3778-26.]

68.08.160 Liability for cost of disposing of remains. The right to control the disposition of the remains of a deceased person, unless other directions have been given

by the decedent, vests in, and the duty of interment and the liability for the reasonable cost of interment of such remains devolves upon the following in the order named:

- (1) The surviving spouse.
- (2) The surviving children of the decedent.
- (3) The surviving parents of the decedent.

The liability for the reasonable cost of interment devolves jointly and severally upon all kin of the decedent hereinbefore mentioned in the same degree of kindred and upon the estate of the decedent. [1943 c 247 § 29; Rem. Supp. 1943 § 3778-29.]

County burial of indigent deceased veterans: RCW 73.08.070.

Disposal of remains of indigent persons: RCW 36.39.030.

Order of payment of debts of estate: RCW 11.76.110.

Welfare and relief, funeral expenses: RCW 74.08.120.

68.08.170 Effect of authorization. Any person signing any authorization for the interment or cremation of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred or cremated, and his authority to order interments or cremation. He is personally liable for all damage occasioned by or resulting from breach of such warranty. [1943 c 247 § 30; Rem. Supp. 1943 § 3778-30.]

68.08.180 Right to rely on authorization. The cemetery authority may inter or cremate any remains upon the receipt of a written authorization of a person representing himself to be a person who has acquired the right to control the disposition of the remains. A cemetery authority is not liable for interring or cremating pursuant to such authorization, unless it has actual notice that such representation is untrue. [1943 c 247 § 31; Rem. Supp. 1943 § 3778-31.]

68.08.190 Liability for damages—Limitation. No action shall lie against any cemetery authority relating to the remains of any person which have been left in its possession for a period of two years, unless a written contract has been entered into with the cemetery authority for their care or unless permanent interment has been made. Nothing in this section shall be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. No licensed funeral director shall be liable in damages for any cremated human remains after the remains have been deposited with a cemetery in the state of Washington. [1943 c 247 § 32; Rem. Supp. 1943 § 3778-32.]

Limitation of actions: Chapter 4.16 RCW.

68.08.200 Permission to remove remains. The remains of a deceased person may be removed from a plot in a cemetery with the consent of the cemetery authority and the written consent of one of the following in the order named:

- (1) The surviving spouse.
- (2) The surviving children of the decedent.
- (3) The surviving parents of the decedent.
- (4) The surviving brothers or sisters of the decedent.

If the required consent cannot be obtained, permission by the superior court of the county where the cemetery is situated is sufficient: *Provided*, That the permission shall not violate the terms of a written contract or the rules and regulations of the cemetery authority. [1943 c 247 § 33; Rem. Supp. 1943 § 3778-33.]

68.08.210 Notice for order to remove remains. Notice of application to the court for such permission shall be given, at least ten days prior thereto, personally, or at least fifteen days prior thereto if by mail, to the cemetery authority and to the persons not consenting, and to every other person on whom service of notice may be required by the court. [1943 c 247 § 34; Rem. Supp. 1943 § 3778-34.]

68.08.220 Exceptions. RCW 68.08.200 and 68.08-.210 do not apply to or prohibit the removal of any remains from one plot to another in the same cemetery or the removal of remains by a cemetery authority from a plot for which the purchase price is past due and unpaid, to some other suitable place; nor do they apply to the disinterment of remains upon order of court or coroner. [1943 c 247 § 35; Rem. Supp. 1943 § 3778-35.]

68.08.230 Undisposed of remains—Rules and regulations. Whenever any dead human body shall have been in the lawful possession of any person, firm, corporation or association for a period of one year or more, or whenever the incinerated remains of any dead human body have been in the lawful possession of any person, firm, corporation or association for a period of two years or more, and the relatives of, or persons interested in, the deceased person shall fail, neglect or refuse for such periods of time, respectively, to direct the disposition to be made of such body or remains, such body or remains may be disposed of by the person, firm, corporation or association having such lawful possession thereof, under and in accordance with such rules and regulations as may be made and promulgated by said director of licenses, not inconsistent with any statute of the state of Washington or rule or regulation prescribed by the state board of health. [1937 c 108 § 14; RRS § 8323-3.]

Reviser's note: The powers, duties and functions of the director and department of licenses were transferred to the director and department of motor vehicles by chapter 156, Laws of 1965 (Chapter 46.01 RCW). Section 41, chapter 170, Laws of 1965 ex.s. (RCW 43.24.022) vested the powers, duties and functions of the director of licenses pursuant to Title 18 RCW in the director of motor vehicles and section 42 of that act (RCW 43.24.024) provided for the delegation of such powers, duties and functions to the division of professional licensing of the department of motor vehicles.

These powers, duties and functions devolved to the business and professional licensing administration of the department of motor vehicles by 1969 ex.s. c 381 § 34 (RCW 46.01.050).

68.08.232 Undisposed of remains—Entrusting to funeral homes or mortuaries. See RCW 36.24.155.

68.08.240 Record of remains to be kept. The person in charge of any premises on which interments or cremations are made shall keep a record of all remains interred or cremated on the premises under his charge,

in each case stating the name of each deceased person, date of cremation or interment, and name and address of the funeral director. [1943 c 247 § 39; Rem. Supp. 1943 § 3778-39.]

68.08.290 Donation of remains for medical purposes—County coroner laws applicable. The provisions of RCW 68.08.250 through 68.08.290 shall be subject to the provisions of law with respect to the duties of county coroners. [1961 c 90 § 6.]

68.08.300 Corneal tissue for transplantation—Authority of county coroner, medical examiner or designee to provide—Conditions. In any case where a patient is in need of corneal tissue for a transplantation, the county coroner, or county medical examiner or designee, may provide corneal tissue, from decedents under his/her jurisdiction, upon the request of an eye bank approved and authorized to make such requests by the secretary of the department of social and health services, subject to the following conditions:

- (1) Ready identification of the decedent is impossible, or
- (2) A reasonable effort to obtain such consent as is required under RCW 68.08.510 is made, within the time period during which corneal tissue is a viable transplant, and no objection by the next of kin is known, and
- (3) Removal of the cornea for transplantation will not interfere with the subsequent course of an investigation or autopsy or alter the post mortem facial appearance of the decedent. [1975-'76 2nd ex.s. c 60 § 1.]

68.08.305 Corneal tissue for transplantation—Presumption of good faith. In any subsequent civil action in which the next of kin of a decedent contends that he/she affirmatively informed the county coroner or medical examiner or designee of his/her objection to removal of corneal tissue from the decedent, it shall be presumed that the county coroner or medical examiner acted in good faith and without knowledge of the objection. [1975-'76 2nd ex.s. c 60 § 2.]

UNIFORM ANATOMICAL GIFT ACT

68.08.500 Definitions. (1) "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts thereof.

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Donor" means an individual who makes a gift of all or part of his body.

(4) "Hospital" means a hospital licensed, accredited, or approved under the laws of any state; includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.

(5) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

(6) "Person" means an individual, corporation, government or governmental subdivision or agency, business

trust, estate, trust, partnership or association, or any other legal entity.

(7) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(8) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America. [1969 c 80 § 2.]

68.08.510 Gift of any part of body to take effect upon death authorized—Who may make—Priorities—Examination—Rights of donee paramount. (1) Any individual of sound mind and eighteen years of age or more may give all or any part of his body for any purpose specified in RCW 68.08.520, the gift to take effect upon death.

(2) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in RCW 68.08.520:

- (a) the spouse,
- (b) an adult son or daughter,
- (c) either parent,
- (d) an adult brother or sister,
- (e) a guardian of the person of the decedent at the time of his death,
- (f) any other person authorized or under obligation to dispose of the body.

(3) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (2) may make the gift after death or during the terminal illness.

(4) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(5) The rights of the donee created by the gift are paramount to the rights of others except as provided by RCW 68.08.560(4). [1969 c 80 § 3.]

68.08.520 Eligible donees. The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(1) Any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation;

(2) Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science, or therapy;

(3) Any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(4) Any specified individual for therapy or transplantation needed by him. [1969 c 80 § 4.]

68.08.530 Gift by will, card, document, or driver's license—Procedures. (1) A gift of all or part of the

body under RCW 68.08.510(1), may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(2) A gift of all or part of the body under RCW 68.08.510(1), may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(3) A gift of all or part of the body under RCW 68.08.510(1) may also be made by a statement provided for on Washington state driver's licenses. The gift becomes effective upon the death of the licensee. The statement must be signed by the licensee in the presence of two witnesses, who must sign the statement in the presence of the donor. Delivery of the license during the donor's lifetime is not necessary to make the gift valid. The gift shall become invalidated upon expiration, cancellation, revocation, or suspension of the license, and the gift must be renewed upon renewal of each license: *Provided*, That the statement of gift herein provided for shall contain a provision, including a clear instruction to the donor, providing for a means by which the donor may at his will revoke such gift: *Provided further*, That nothing in this chapter shall be construed to invalidate a donor card located elsewhere.

(4) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(5) Notwithstanding RCW 68.08.560(2), the donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

(6) Any gift by a person designated in RCW 68.08.510(2), shall be made by a document signed by him or made by his telegraphic, recorded telephonic, or other recorded message. [1975 c 54 § 2; 1969 c 80 § 5.]

Driver's licenses, anatomical gift statements: RCW 46.20.113.

68.08.540 Delivery of will, card or other document to specified donee. If the gift is made by the donor to a specified donee, the will, card, or other document, or an

executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts it for safe-keeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination. [1969 c 80 § 6.]

68.08.550 Amendment or revocation of gift. (1) If the will, card, or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

(a) the execution and delivery to the donee of a signed statement;

(b) an oral statement made in the presence of two persons and communicated to the donee;

(c) a statement during a terminal illness or injury addressed to an attending physician and communicated to the donee;

(d) a signed card or document found on his person or in his effects.

(2) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (1) above, or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(3) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (1) above. [1969 c 80 § 7.]

68.08.560 Acceptance or rejection of gift—Time of death—Liability for damages. (1) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(2) The time of death shall be determined by a physician who tends the donor at his death, or, if none, the physician who certifies the death. The physician shall not participate in the procedures for removing or transplanting a part.

(3) A person who acts in good faith in accord with the terms of RCW 68.08.500 through 68.08.610 or with the anatomical gift laws of another state (or a foreign country) is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(4) The provisions of RCW 68.08.500 through 68.08.610 are subject to the laws of this state prescribing powers and duties with respect to autopsies. [1969 c 80 § 8.]

68.08.600 Uniformity. RCW 68.08.500 through 68.08.610 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1969 c 80 § 9.]

68.08.610 Short title. RCW 68.08.500 through 68.08.610 may be cited as the "Uniform Anatomical Gift Act". [1969 c 80 § 11.]

Chapter 68.12 PUBLIC CEMETERIES AND MORGUES

Sections

68.12.010	Morgues authorized in certain counties.
68.12.020	Coroner to control morgue—Expense.
68.12.030	Counties and cities may provide for burial, acquire cemeteries, etc.
68.12.040	Cities and towns may own, improve, etc., cemeteries.
68.12.045	Cities and towns may provide for a cemetery board.
68.12.050	Cemetery improvement fund.
68.12.060	Care and investment of fund.
68.12.065	Approval of investments.
68.12.070	Cemetery fund—Management.
68.12.080	Books of account—Audit.

Cemeteries, powers of cities, towns, townships: RCW 35.13.180, 35.22.280, 35.23.440, 35.24.300, 35.27.370(2), and 45.12.100.

Taxation, exemptions: RCW 84.36.020.

68.12.010 Morgues authorized in certain counties. In counties of the first class of more than two hundred and fifty thousand population, the county commissioners, within three months after the taking effect of this act and in counties which shall hereafter attain a population of more than two hundred and fifty thousand, within one year after attaining such population, may at their discretion provide and equip a public morgue together with suitable morgue wagon for the conveyance, receipt and proper disposition of the bodies of all deceased persons not claimed by relatives, and of all dead bodies which are by law subject to a post mortem or coroner's inquest: *Provided, however,* That only one public morgue may be established in any county. [1917 c 90 § 1; RRS § 6040.]

Effective date—1917 c 90: The effective date of this act is midnight June 6, 1917, see preface 1917 session laws.

68.12.020 Coroner to control morgue—Expense. Such morgue shall be under the control and management of the coroner who shall have power with the advice and consent of the county commissioners, to employ the necessary deputies and employees; and, with the advice and consent of the county commissioners, to fix their salaries and compensation, which, together with the expenses of operating such morgue, shall be paid monthly out of the county treasury. [1917 c 90 § 2; RRS § 6041.]

68.12.030 Counties and cities may provide for burial, acquire cemeteries, etc. Each and every county, town or city, shall have power to provide a hearse and pall for burial of the dead, and to procure and hold lands for burying grounds, and to make regulations and fence the same, and to preserve the monuments erected therein,

and to levy and collect the necessary taxes for that purpose, in the same manner as other taxes are levied and collected. [1857 p 28 § 3; RRS § 3772.]

68.12.040 Cities and towns may own, improve, etc., cemeteries. Any city or town may acquire, hold, or improve land for cemetery purposes, and may sell lots therein, and may provide by ordinance that a specified percentage of the proceeds therefrom be set aside and invested, and the income from the investment be used in the care of the lots, and may take and hold any property devised, bequeathed or given upon trust, and apply the income thereof for the improvement or embellishment of the cemeteries or the erection or preservation of structures, fences, or walks therein, or for the repair, preservation, erection, or renewal of any tomb, monument, gravestone, fence, railing, or other erection at or around a cemetery, lot, or plat, or for planting and cultivating trees, shrubs, flowers, or plants in or around the lot or plot, or for improving or embellishing the cemetery in any other manner or form consistent with the design and purpose of the city, according to the terms of the grant, devise, or bequest. [1955 c 378 § 1; 1909 c 156 § 1; RRS § 3773.]

68.12.045 Cities and towns may provide for a cemetery board. The legislative body of any city or town may provide by ordinance for a cemetery board to be appointed by the mayor in cities and towns operating under the mayor-council form of government, by the city commission in cities operating under the commission form of government, and by the city manager in cities and towns operating under the council-manager form of government: *Provided further*, That no ordinance shall be enacted, pursuant to this section, in conflict with provisions contained in charters of cities of the first class. [1955 c 378 § 2.]

68.12.050 Cemetery improvement fund. All moneys received in the manner above provided shall be deposited with the city treasurer, and shall be kept apart in a fund known as the cemetery improvement fund, and shall be paid out only upon warrants drawn by the order of the cemetery board, if such a board exists, or by order of the body, department, commission, or committee duly authorized by ordinance to issue such an order, or by the legislative body of a city or town, which order shall be approved by such legislative body if such order is not issued by the legislative body, and shall be indorsed by the mayor and attested by the city comptroller or other authorized officer. [1955 c 378 § 3; 1909 c 156 § 4; RRS § 3776.]

68.12.060 Care and investment of fund. It shall be the duty of the cemetery board and other body or commission having in charge the care and operation of cemeteries to invest all sums set aside from the sale of lots, and all sums of money received, and to care for the income of all money and property held in trust for the purposes designated herein: *Provided, however*, That all investments shall be made in municipal, county, school or state bonds, general obligation warrants of the city

owning such cemetery, or in first mortgages on good and improved real estate. [1933 c 91 § 1; 1909 c 156 § 2; RRS § 3774. FORMER PART OF SECTION: 1909 c 156 § 3 now codified as RCW 68.12.065.]

68.12.065 Approval of investments. All investments shall be approved by the council or legislative body of the city. [1909 c 156 § 3; RRS § 3775. Formerly RCW 68.12.060, part.]

68.12.070 Cemetery fund—Management. The said city shall, by ordinance, make all necessary rules and regulations concerning the control and management of said fund to properly safeguard the same, but shall in nowise be liable for any of said funds except a misappropriation thereof, and shall not have power to bind the city or said fund for any further liability than whatever net interest may be actually realized from such investments, and shall not be liable to any particular person for more than the proportionate part of such net earnings. [1909 c 156 § 6; RRS § 3778.]

68.12.080 Books of account—Audit. Accurate books of account shall be kept of all transactions pertaining to said fund, which books shall be open to the public for inspection and shall be audited by the auditing committee of said city. [1909 c 156 § 5; RRS § 3777.]

Chapter 68.16 CEMETERY DISTRICTS

Sections

68.16.010	Establishment authorized.
68.16.020	Petition—Requisites—Examination.
68.16.030	Hearing, place and date of.
68.16.040	Publication and posting of petition and notice of hearing.
68.16.050	Hearing—Inclusion and exclusion of lands.
68.16.060	Election on formation of district and to elect first commissioners.
68.16.070	Election, how conducted—Notice.
68.16.080	Election ballot.
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68.16.100	Review—Organization complete.
68.16.110	General powers of district.
68.16.111	Contracts with third class cities, towns, for public facilities and services—Joint purchasing.
68.16.112	Public cemetery facilities or services—Cooperation with public or private agencies—Joint purchasing.
68.16.113	Public cemetery facilities or services—"Public agency" defined.
68.16.120	Right of eminent domain.
68.16.130	Power to do cemetery business—District may embrace certain cities and towns—Eminent domain exception.
68.16.140	District commissioners—Election.
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68.16.200	Duty of county treasurer—Cemetery district fund.
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68.16.240	Dissolution of districts.
68.16.250	Disincorporation of district located in class A or AA county and inactive for five years.
68.16.900	Severability—1947 c 6.

Taxation, exemptions: RCW 84.36.020.

68.16.010 Establishment authorized. Cemetery districts may be established in all counties and on any island in any county, as in this chapter provided. [1971 c 19 § 1; 1957 c 99 § 1; 1953 c 41 § 1; 1947 c 27 § 1; 1947 c 6 § 1; Rem. Supp. 1947 § 3778-150.]

68.16.020 Petition—Requisites—Examination. For the purpose of forming a cemetery district, a petition designating the boundaries of the proposed district by metes and bounds or describing the lands to be included in the proposed district by government townships, ranges and legal subdivisions, signed by not less than fifteen percent of the qualified registered electors, who are property owners or are purchasing property under contract and who are resident within the boundaries of the district, setting forth the object of the formation of such district and stating that the establishment thereof will be conducive to the public welfare and convenience, shall be filed with the county auditor of the county within which the proposed district is located, accompanied by an obligation signed by two or more petitioners agreeing to pay the cost of publishing the notice hereinafter provided for. The county auditor shall, within thirty days from the date of filing of such petition, examine the signatures and certify to the sufficiency or insufficiency thereof and for such purpose shall have access to registration books and records in possession of the registration officers of the election precincts included in whole or in part within the boundaries of the proposed district and to the tax rolls and other records in the offices of the county assessor and county treasurer. No person having signed a petition shall be allowed to withdraw his name therefrom after it has been filed with the county auditor. If the petition is found to contain a sufficient number of signatures of qualified persons, the county auditor shall transmit it, with his certificate of sufficiency attached, to the board of county commissioners which shall thereupon, by resolution entered upon its minutes, receive the same and fix a day and hour when it will publicly hear said petition. [1947 c 6 § 2; Rem. Supp. 1947 § 3778-151.]

68.16.030 Hearing, place and date of. The hearing on such petition shall be at the office of the board of county commissioners and shall be held not less than twenty nor more than forty days from the date of receipt thereof from the county auditor. The hearing may be completed on the day set therefor or it may be adjourned from time to time as may be necessary, but such adjournment or adjournments shall not extend the time for determining said petition more than sixty days in all from the date of receipt by the board. [1947 c 6 § 3; Rem. Supp. 1947 § 3778-152.]

68.16.040 Publication and posting of petition and notice of hearing. A copy of the petition with the names of petitioners omitted, together with a notice signed by the clerk of the board of county commissioners stating the day, hour and place of the hearing, shall be published in three consecutive weekly issues of the official

newspaper of the county prior to the date of hearing. Said clerk shall also cause a copy of the petition with the names of petitioners omitted, together with a copy of the notice attached, to be posted for not less than fifteen days before the date of hearing in each of three public places within the boundaries of the proposed district, to be previously designated by him and made a matter of record in the proceedings. [1947 c 6 § 4; Rem. Supp. 1947 § 3778-153.]

68.16.050 Hearing—Inclusion and exclusion of lands. At the time and place fixed for hearing on the petition or at any adjournment thereof, the board of county commissioners shall hear said petition and receive such evidence as it may deem material in favor of or opposed to the formation of the district or to the inclusion therein or exclusion therefrom of any lands, but no lands not within the boundaries of the proposed district as described in the petition shall be included without a written waiver describing the land, executed by all persons having any interest of record therein, having been filed in the proceedings. No land within the boundaries described in petition shall be excluded from the district. [1947 c 6 § 5; Rem. Supp. 1947 § 3778-154.]

68.16.060 Election on formation of district and to elect first commissioners. The board of county commissioners shall have full authority to hear and determine the petition, and if it finds that the formation of the district will be conducive to the public welfare and convenience, it shall by resolution so declare, otherwise it shall deny the petition. If the board finds in favor of the formation of the district, it shall designate the name and number of the district, fix the boundaries thereof, and cause an election to be held therein for the purpose of determining whether or not the district shall be organized under the provisions of this chapter, and for the purpose of electing its first cemetery district commissioners. The board shall, prior to calling the said election, name three registered resident electors who are property owners or are purchasing property under contract within the boundaries of the district as candidates for election as cemetery district commissioners. [1947 c 6 § 6; Rem. Supp. 1947 § 3778-155.]

68.16.070 Election, how conducted—Notice. Except as otherwise provided in this chapter, the election shall insofar as possible be called, noticed, held, conducted and canvassed in the same manner and by the same officials as provided by law for special elections in the county. For the purpose of such election county voting precincts may be combined or divided and redefined, and the territory in the district shall be included in one or more election precincts as may be deemed convenient, a polling place being designated for each such precinct. The notice of election shall state generally and briefly the purpose thereof, shall give the boundaries of the proposed district, define the election precinct or precincts, designate the polling place for each, mention the names of the candidates for first cemetery district commissioners, and name the day of the election and the

hours during which the polls will be open. [1947 c 6 § 7; Rem. Supp. 1947 § 3778–156.]

Elections: Title 29 RCW.

68.16.080 Election ballot. The ballot for said election shall be in such form as may be convenient but shall present the propositions substantially as follows:

----- (insert county name) ----- cemetery district No.
 ----- (insert number) -----
 ----- Yes -----
 ----- (insert county name) ----- cemetery district No.
 ----- (insert number) -----
 ----- No -----

and shall specify the names of the candidates nominated for election as the first cemetery district commissioners with appropriate space to vote for the same. [1947 c 6 § 8; Rem. Supp. 1947 § 3778–157.]

68.16.090 Canvass of returns—Resolution of organization. The returns of such election shall be canvassed at the court house on the Monday next following the day of the election, but the canvass may be adjourned from time to time if necessary to await the receipt of election returns which may be unavoidably delayed. The canvassing officials, upon conclusion of the canvass, shall forthwith certify the results thereof in writing to the board of county commissioners. If upon examination of the certificate of the canvassing officials it is found that two-thirds of all the votes cast at said election were in favor of the formation of the cemetery district, the board of county commissioners shall, by resolution entered upon its minutes, declare such territory duly organized as a cemetery district under the name theretofore designated and shall declare the three candidates receiving the highest number of votes for cemetery commissioners, the duly elected first cemetery commissioners of the district. The clerk of the board of county commissioners shall certify a copy of the resolution and cause it to be filed for record in the offices of the county auditor and the county assessor of the county. The certified copy shall be entitled to record without payment of a recording fee. If the certificate of the canvassing officials shows that the proposition to organize the proposed cemetery district failed to receive two-thirds of the votes cast at said election, the board of county commissioners shall enter a minute to that effect and all proceedings theretofore had shall become null and void. [1947 c 6 § 9; Rem. Supp. 1947 § 3778–158.]

68.16.100 Review—Organization complete. Any person, firm or corporation having a substantial interest involved, and feeling aggrieved by any finding, determination or resolution of the board of county commissioners under the provisions of this chapter, may appeal within five days after such finding, determination or resolution was made to the superior court of the county in the same manner as provided by law for appeals from orders of said board. After the expiration of five days from the date of the resolution declaring the district organized, and upon filing of certified copies thereof in the offices of the county auditor and county assessor, the

formation of the district shall be complete and its legal existence shall not thereafter be questioned by any person by reason of any defect in the proceedings had for the creation thereof. [1947 c 6 § 10; Rem. Supp. 1947 § 3778–159.]

Appeals from action of board of county commissioners: RCW 36.32.330.

68.16.110 General powers of district. Cemetery districts created under this chapter shall be deemed to be municipal corporations within the purview of the Constitution and laws of the state of Washington. They shall constitute bodies corporate and possess all the usual powers of corporations for public purposes. They shall have full authority to carry out the objects of their creation, and to that end are empowered to acquire, hold, lease, manage, occupy and sell real and personal property or any interest therein; to enter into and perform any and all necessary contracts; to appoint and employ necessary officers, agents and employees; to contract indebtedness; to borrow money; to levy and enforce the collection of taxes against the lands within the district, and to do any and all lawful acts to effectuate the purposes of this chapter. [1967 c 164 § 6; 1947 c 6 § 11; Rem. Supp. 1947 § 3778–160.]

Purpose—1967 c 164: See note following RCW 4.96.010.

Severability—1967 c 164: See note following RCW 4.96.010.

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: RCW 4.96.010.

68.16.111 Contracts with third class cities, towns, for public facilities and services—Joint purchasing. See RCW 35.24.274 and 35.24.275.

Townships—Joint acquisition, operation and maintenance of public cemeteries: RCW 45.12.021.

68.16.112 Public cemetery facilities or services—Cooperation with public or private agencies—Joint purchasing. A cemetery district may jointly operate or provide, cooperate to operate and provide and/or contract for a term of not to exceed five years to provide or have provided public cemetery facilities or services, with any other public or private agency, including out of state public agencies, which each is separately authorized to operate or provide, under terms mutually agreed upon by such public or private agencies. The governing body of a cemetery district may join with any other public or private agency in buying supplies, equipment, and services collectively. [1963 c 112 § 3.]

68.16.113 Public cemetery facilities or services—"Public agency" defined. As used in RCW 68.16.112, "public agency" means counties, cities and towns, special districts, or quasi municipal corporations. [1963 c 112 § 2.]

68.16.120 Right of eminent domain. The taking and damaging of property or rights therein by any cemetery district to carry out the purposes of its creation, are hereby declared to be for a public use, and any such district shall have and exercise the power of eminent domain to acquire any property or rights therein, either

inside or outside the district for the use of such district. In exercising the power of eminent domain, a district shall proceed in the manner provided by law for the appropriation of real property or rights therein by private corporations. It may at its option unite in a single action proceedings to condemn property held by separate owners. Two or more condemnation suits instituted separately may also in the discretion of the court be consolidated upon motion of any interested party into a single action. In such cases the jury shall render separate verdicts for each tract of land in different ownership. No finding of the jury or decree of the court as to damages in any condemnation suit instituted by the district shall be held or construed to destroy the right of the district to levy and collect taxes for any and all district purposes against the uncondemned land situated within the district. [1947 c 6 § 12; Rem. Supp. 1947 § 3778-161.]

*Eminent domain: State Constitution Art. 1 § 16 (Amendment 9).
Eminent domain by corporations: Chapter 8.20 RCW.*

68.16.130 Power to do cemetery business—District may embrace certain cities and towns—Eminent domain exception. (1) A cemetery district organized under this chapter shall have power to acquire, establish, maintain, manage, improve and operate cemeteries and conduct any and all of the businesses of a cemetery as defined in this title. A cemetery district shall constitute a cemetery authority as defined in this title and shall have and exercise all powers conferred thereby upon a cemetery authority and be subject to the provisions thereof.

(2) A cemetery district may include within its boundaries the lands embraced within the corporate limits of any incorporated city or town up to and including third class cities in all counties and in any such cases the district may acquire any cemetery or cemeteries theretofore maintained and operated by any such city or town and proceed to maintain, manage, improve and operate the same under the provisions hereof. In such event the governing body of the city or town, after the transfer takes place, shall levy no cemetery tax. The power of eminent domain heretofore conferred shall not extend to the condemnation of existing cemeteries within the district: *Provided*, That no cemetery district shall operate a cemetery within the corporate limits of any city or town where there is a private cemetery operated for profit. [1971 c 19 § 2; 1959 c 23 § 2; 1957 c 39 § 1; 1947 c 6 § 13; Rem. Supp. 1947 § 3778-162.]

68.16.140 District commissioners—Election. The affairs of the district shall be managed by a board of cemetery district commissioners composed of three qualified electors of the district. Members of the board shall receive no compensation for their services, but shall receive expenses necessarily incurred in attending meetings of the board or when otherwise engaged in district business. The board shall fix the compensation to be paid the secretary and other employees of the district. The first three cemetery district commissioners shall serve only until the next general election, provided such election occurs thirty or more days after the formation of the district, and until their successors have been elected and qualified. At the next general election, provided it

occurs thirty or more days after the formation of the district, three members of the board of cemetery commissioners shall be chosen. They shall have the same qualifications as required of the first three cemetery commissioners. The candidate receiving the highest number of votes shall serve for a term of six years beginning on the second Monday in January following; the candidate receiving the next higher number of votes shall serve for a term of four years from said date; and the candidate receiving the next higher number of votes shall serve for a term of two years from said date. Upon the expiration of their respective terms, successors shall be chosen for terms of six years to begin on the second Monday in January next succeeding the day of election. Such commissioners shall serve until their successors have been elected and qualified. Elections shall be called, noticed, conducted and canvassed by the same officials as provided for general county elections. The polling places for a cemetery district election shall be those of the county voting precincts which include any of the territory within the cemetery district, and may be located outside the boundaries of the district, and no such election shall be held irregular or void on that account. [1947 c 6 § 14; Rem. Supp. 1947 § 3778-163.]

68.16.150 Declarations of candidacy. Not later than fifteen days before the day of election, any qualified registered elector of the district desiring to become a candidate for the office of cemetery district commissioner shall file with the county auditor of his county a statement of his candidacy in the same manner as provided for candidates for county office. All electors so filing their statements shall be entitled to have their names appear as candidates on the election ballot. [1947 c 6 § 15; Rem. Supp. 1947 § 3778-164.]

Declaration of candidacy: RCW 29.18.030 through 29.18.060.

68.16.160 Vacancies. In case a vacancy occurs in the office of cemetery commissioner, it shall be filled by appointment of a qualified registered elector of the district by the board of county commissioners, and the person appointed shall serve until his successor has been elected and qualified. At the next general election, provided there is sufficient time for the nomination of candidates for the office of cemetery commissioner after the filling of a vacancy in such office, there shall be elected a cemetery commissioner to serve for the remainder of the unexpired term. [1947 c 6 § 16; Rem. Supp. 1947 § 3778-165.]

68.16.170 Special elections. Special elections submitting propositions to the qualified voters of the district may be called at any time by resolution of the cemetery commissioners, and shall be called, noticed, held, conducted and canvassed in the same manner and by the same officials as provided for the election to determine whether the district shall be created. The qualifications of electors at all district elections shall be the same as for general state and county elections. [1947 c 6 § 17; Rem. Supp. 1947 § 3778-166.]

Qualifications of electors: RCW 29.07.070.

68.16.180 Oath of commissioners. Each cemetery commissioner, before assuming the duties of his office, shall take and subscribe an official oath to faithfully discharge the duties of his office, which oath shall be filed in the office of the county clerk. [1947 c 6 § 18; Rem. Supp. 1947 § 3778-167.]

68.16.190 Organization of board—Secretary—Office—Meetings—Powers. The board of cemetery district commissioners shall organize and elect a chairman from their number and shall appoint a secretary for such term as they may determine. The secretary shall keep a record of proceedings of the board and perform such other duties as may be prescribed by law or by the board, and shall also take and subscribe an oath for the faithful discharge of his duties, which shall be filed with the county clerk. The office of the board of cemetery commissioners and principal place of business of the district shall be at some place in the district designated by the board. The board shall hold regular monthly meetings at its office on such day as it may by resolution determine and may adjourn such meetings as may be required for the transaction of business. Special meetings of the board may be called at any time by a majority of the commissioners or by the secretary and the chairman of the board. Any commissioner not joining in the call of a special meeting shall be entitled to three days written notice by mail of such meeting, specifying generally the business to be transacted. All meetings of the board of cemetery commissioners shall be public and a majority shall constitute a quorum. All records of the board shall be open to the inspection of any elector of the district at any meeting of the board. The board shall adopt a seal for the district; manage and conduct the affairs of the district; make and execute all necessary contracts; employ any necessary service, and promulgate reasonable rules and regulations for the government of the district and the performance of its functions and generally perform all acts which may be necessary to carry out the purposes for which the district was formed. [1947 c 6 § 19; Rem. Supp. 1947 § 3778-168.]

68.16.200 Duty of county treasurer—Cemetery district fund. It shall be the duty of the county treasurer of the county in which any cemetery district is situated to receive and disburse all district revenues and collect all taxes authorized and levied under this chapter. There is hereby created in the office of county treasurer of each county in which a cemetery district shall be organized for the use of the district, a cemetery district fund. All taxes levied for district purposes when collected shall be placed by the county treasurer in the cemetery district fund. [1947 c 6 § 20; Rem. Supp. 1947 § 3778-169.]

68.16.210 Tax levy authorized for fund. Annually, after the county board of equalization has equalized assessments for general tax purposes, the secretary of the district shall prepare a budget of the requirements of the cemetery district fund, certify the same and deliver it to the board of county commissioners in ample time for such board to levy district taxes. At the time of making general tax levies in each year, the board of

county commissioners shall levy taxes required for cemetery district purposes against the real and personal property in the district in accordance with the equalized valuation thereof for general tax purposes, and as a part of said general taxes. Such levies shall be part of the general tax roll and be collected as a part of general taxes against the property in the district. [1947 c 6 § 21; Rem. Supp. 1947 § 3778-170.]

68.16.220 Disbursement of fund. The county treasurer shall disburse the cemetery district fund upon warrants issued by the county auditor on vouchers approved and signed by a majority of the board of cemetery commissioners and the secretary thereof. [1947 c 6 § 22; Rem. Supp. 1947 § 3778-171.]

68.16.230 Limitation of indebtedness—Limitation of tax levy. The board of cemetery commissioners shall have no authority to contract indebtedness in any year in excess of the aggregate amount of the currently levied taxes, which annual tax levy for cemetery district purposes shall not exceed eleven and one-quarter cents per thousand dollars of assessed valuation. [1973 1st ex.s. c 195 § 77; 1947 c 6 § 23; Rem. Supp. 1947 § 3778-172.]

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

68.16.240 Dissolution of districts. Cemetery districts may be dissolved by a majority vote of the electors at an election called for that purpose, which shall be conducted in the same manner as provided for special elections, and no further district obligations shall thereafter be incurred, but such dissolution shall not abridge or cancel any of the outstanding obligations of the district, and the board of county commissioners shall have authority to make annual levies against the lands included within the district until the obligations of the district are fully paid. When the obligations are fully paid, any moneys remaining in the cemetery district fund and all collections of unpaid district taxes shall be transferred to the current expense fund of the county. [1947 c 6 § 24; Rem. Supp. 1947 § 3778-173.]

Dissolution: Chapter 53.48 RCW.

68.16.250 Disincorporation of district located in class A or AA county and inactive for five years. See chapter 57.90 RCW.

68.16.900 Severability—1947 c 6. If any portion of this act shall be adjudged invalid or unconstitutional for any reason, such adjudication shall not affect, impair or invalidate the remaining portions of the act. [1947 c 6 § 25; no RRS.]

Chapter 68.18 ANNEXATION AND MERGER OF CEMETERY DISTRICTS

Sections	
68.18.010	Annexation—Petition—Procedure.
68.18.020	Merger—Authorized.
68.18.030	Merger—Petition—Procedure—Contents.

- 68.18.040 Merger—Petition—Rejection, concurrence or modification—Signatures.
- 68.18.050 Merger—Petition—Special election.
- 68.18.060 Merger—Petition—Election—Vote required—Merger effected.
- 68.18.070 Merger—Petition—When election dispensed with.
- 68.18.080 Merger—Preexisting obligations.
- 68.18.090 Merger—Transfer of all property, funds, assessments.
- 68.18.100 Merger and transfer of part of one district to adjacent district—Petition—Election—Vote.
- 68.18.110 Merger and transfer of part of one district to adjacent district—When election dispensed with.
- 68.18.120 Merger and transfer of part of one district to adjacent district—Preexisting indebtedness.

68.18.010 Annexation—Petition—Procedure. Any territory contiguous to a cemetery district and not within the boundaries of a city or town other than as set forth in RCW 68.16.130 or other cemetery district may be annexed to such cemetery district by petition of fifteen percent of the qualified registered electors residing within the territory proposed to be annexed. Such petition shall be filed with the cemetery commissioners of the cemetery district and if the said cemetery commissioners shall concur in the said petition they shall then file such petition with the county auditor who shall within thirty days from the date of filing such petition examine the signatures thereof and certify to the sufficiency or insufficiency thereof. After the county auditor shall have certified to the sufficiency of the petition, the proceedings thereafter by the board of county commissioners, and the rights and powers and duties of the board of county commissioners, petitioners and objectors and the election and canvass thereof shall be the same as in the original proceedings to form a cemetery district: *Provided*, That the board of county commissioners shall have authority and it shall be its duty to determine on an equitable basis, the amount of obligation which the territory to be annexed to the district shall assume, if any, to place the taxpayers of the existing district on a fair and equitable relationship with the taxpayers of the territory to be annexed by reason of the benefits of coming into a going district previously supported by the taxpayers of the existing district, and such obligation may be paid to the district in yearly installments to be fixed by the county board if within the limits as outlined in RCW 68.16.230 and included in the annual tax levies against the property in such annexed territory until fully paid. The amount of the obligation and the plan of payment thereof filed by the county board shall be set out in general terms in the notice of election for annexation: *Provided*, That the special election shall be held only within the boundaries of the territory proposed to be annexed to said cemetery district. Upon the entry of the order of the board of county commissioners incorporating such contiguous territory within such existing cemetery district, said territory shall become subject to the indebtedness, bonded or otherwise, of said existing district in like manner as the territory of said district. Should such petition be signed by sixty percent of the qualified registered electors residing within the territory proposed to be annexed, and should the cemetery commissioners concur therein, an election in such territory and a hearing on such petition shall be dispensed with and the board of county commissioners shall enter its

order incorporating such territory within the said existing cemetery district. [1969 ex.s. c 78 § 1.]

68.18.020 Merger—Authorized. A cemetery district organized under chapter 68.16 RCW may merge with another such district lying adjacent thereto, upon such terms and conditions as they agree upon, in the manner hereinafter provided. The district desiring to merge with another district shall hereinafter be called the "merging district", and the district into which the merger is to be made shall be called the "merger district". [1969 ex.s. c 78 § 2.]

68.18.030 Merger—Petition—Procedure—Contents. To effect such a merger, a petition therefor shall be filed with the board of the merger district by the commissioners of the merging district. The commissioners of the merging district may sign and file the petition upon their own initiative, and they shall file such a petition when it is signed by fifteen percent of the qualified electors resident in the merging district and presented to them. The petition shall state the reasons for the merger; give a detailed statement of the district's finances, listing its assets and liabilities; state the terms and conditions under which the merger is proposed; and pray for the merger. [1969 ex.s. c 78 § 3.]

68.18.040 Merger—Petition—Rejection, concurrence or modification—Signatures. The board of the merger district may, by resolution, reject the petition, or it may concur therein as presented, or it may modify the terms and conditions of the proposed merger, and shall transmit the petition, together with a copy of its resolution thereon to the merging district. If the petition is concurred in as presented or as modified, the board of the merging district shall forthwith present the petition to the auditor of the county in which the merging district is situated, who shall within thirty days examine the signatures thereon and certify to the sufficiency or insufficiency thereof, and for that purpose he shall have access to all registration books and records in the possession of the registration officers of the election precincts included, in whole or in part, within the merging district. Such books and records shall be prima facie evidence of truth of the certificate. No signatures may be withdrawn from the petition after the filing. [1969 ex.s. c 78 § 4.]

68.18.050 Merger—Petition—Special election. If the auditor finds that the petition contains the signatures of a sufficient number of qualified electors, he shall return it, together with his certificate of sufficiency attached thereto, to the board of the merging district. Thereupon such board shall adopt a resolution, calling a special election in the merging district, at which shall be submitted to the electors thereof, the question of the merger. [1969 ex.s. c 78 § 5.]

68.18.060 Merger—Petition—Election—Vote required—Merger effected. The board of [the] merging district shall notify the board of the merger district of the results of the election. If three-fifths of the votes

cast at the election favor the merger, the respective district boards shall adopt concurrent resolutions, declaring the districts merged, under the name of the merger district. Thereupon the districts are merged into one district, under the name of the merger district; the merging district is dissolved without further proceedings; and the boundaries of the merger district are thereby extended to include all the area of the merging district. Thereafter the legal existence cannot be questioned by any person by reason of any defect in the proceedings had for the merger. [1969 ex.s. c 78 § 6.]

68.18.070 Merger—Petition—When election dispensed with. If three-fifths of all the qualified electors in the merging district sign the petition to merge, no election on the question of the merger is necessary. In such case the auditor shall return the petition, together with his certificate of sufficiency attached thereto, to the board of the merging district. Thereupon the boards of the respective districts shall adopt their concurrent resolutions of merger in the same manner and to the same effect as if the merger had been authorized by an election. [1969 ex.s. c 78 § 7.]

68.18.080 Merger—Preexisting obligations. None of the obligations of the merged districts or of a local improvement district therein shall be affected by the merger and dissolution, and all land liable to be assessed to pay any of such indebtedness shall remain liable to the same extent as if the merger had not been made, and any assessments theretofore levied against the land shall remain unimpaired and shall be collected in the same manner as if no merger had been made. The commissioners of the merged district shall have all the powers possessed at the time of the merger by the commissioners of the two districts, to levy, assess and cause to be collected all assessments against any land in both districts which may be necessary to provide for the payment of the indebtedness thereof, and until the assessments are collected and all indebtedness of the districts paid, separate funds shall be maintained for each district as were maintained before the merger: *Provided*, That the board of the merged district may, with the consent of the creditors of the districts merged, cancel any or all assessments theretofore levied, in accordance with the terms and conditions of the merger, to the end that the lands in the respective districts shall bear their fair and proportionate share of such indebtedness. [1969 ex.s. c 78 § 8.]

68.18.090 Merger—Transfer of all property, funds, assessments. The commissioners of the merging district shall, forthwith upon completion of the merger, transfer, convey, and deliver to the merged district all property and funds of the merging district, together with all interest in and right to collect any assessments theretofore levied. [1969 ex.s. c 78 § 9.]

68.18.100 Merger and transfer of part of one district to adjacent district—Petition—Election—Vote. A part of one district may be transferred and merged

with an adjacent district whenever such area can be better served by the merged district. To effect such a merger a petition, signed by not less than fifteen percent of the qualified electors residing in the area to be merged, shall be filed with the commissioners of the merging district. Such petition shall be promoted by one or more qualified electors within the area to be transferred. If the commissioners of the merging district act favorably upon the petition, then the petition shall be presented to the commissioners of the merger district. If the commissioners of the merger district act favorably upon the petition, an election shall be called in the area merged.

In the event that either board of cemetery commissioners should not concur with the petition, the petition may then be presented to a county review board established for such purposes, if there be no county review board for such purposes then to the state review board and if there be no state review board, then to the county commissioners of the county in which the area to be merged is situated, who shall decide if the area can be better served by such a merger; upon an affirmative decision an election shall be called in the area merged.

A majority of the votes cast shall be necessary to approve the transfer. [1969 ex.s. c 78 § 10.]

68.18.110 Merger and transfer of part of one district to adjacent district—When election dispensed with. If three-fifths of all the qualified electors in the area to be merged sign a petition to merge the districts, no election on the question of the merger is necessary, in which case the auditor shall return the petition, together with his certificate of sufficiency attached thereto, to the boards of the merging districts. Thereupon the boards of the respective districts shall adopt their concurrent resolutions of transfer in the same manner and to the same effect as if the same had been authorized by an election. [1969 ex.s. c 78 § 11.]

68.18.120 Merger and transfer of part of one district to adjacent district—Preexisting indebtedness. When a part of one cemetery district is transferred to another as provided by RCW 68.18.100 and 68.18.110, said part shall be relieved of all liability for any indebtedness of the district from which it is withdrawn. However, the acquiring district shall pay to the losing district that portion of the latter's indebtedness for which the transferred part was liable. This amount shall not exceed the proportion that the assessed valuation of the transferred part bears to the assessed valuation of the whole district from which said part is withdrawn. The adjustment of such indebtedness shall be based on the assessment for the year in which the transfer is made. The boards of commissioners of the districts involved in the said transfer and merger shall enter into a contract for the payment by the acquiring district of the above-referred to indebtedness under such terms as they deem proper, provided such contract shall not impair the security of existing creditors. [1969 ex.s. c 78 § 12.]

Chapter 68.20
PRIVATE CEMETERIES

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- 68.20.105 Crematory record of caskets—Penalty.
- 68.20.110 Nonprofit cemetery association—Tax exempt land—Irreducible fund—Bonds.
- 68.20.120 Sold lots exempt from taxes, etc.—Nonprofit associations.
- 68.20.130 Ground plans.

68.20.010 Incorporation required. It is unlawful for any corporation, copartnership, firm, trust, association, or individual to engage in or transact any of the businesses of a cemetery within this state except by means of a corporation duly organized for that purpose. [1943 c 247 § 42; Rem. Supp. 1943 § 3778–42.]

68.20.020 Corporations, how organized. Any private corporation authorized by its articles so to do, may establish, maintain, manage, improve, or operate a cemetery, and conduct any or all of the businesses of a cemetery, either for or without profit to its members or stockholders. A nonprofit cemetery corporation may be organized in the manner provided in chapter 24.16 RCW. A profit corporation may be organized in the manner provided in the general corporation laws of the state of Washington. [1943 c 247 § 43; Rem. Supp. 1943 § 3778–43. Prior: 1899 c 33 § 1; 1856–7 p 28 § 1.]

Corporations (profit): Title 23A RCW.

68.20.030 Powers of existing corporations enlarged. The powers, privileges and duties conferred and imposed upon any corporation, firm, copartnership, association, trust, or individual, existing and doing business under the laws of this state, are hereby enlarged as each particular case may require to conform to the provisions of *this act. [1943 c 247 § 45; Rem. Supp. 1943 § 3778–45.]

*Reviser's note: "this act", see note following RCW 68.04.020.

68.20.040 Prior corporations not affected. The provisions of *this act do not affect the corporate existence or rights or powers of any cemetery organized under any law then existing prior to **the effective date of this act, and as to such cemeteries and their rights, powers specified in their charters or articles of incorporation, the laws under which the corporation was organized and

existed and under which such rights and powers become fixed or vested are applicable. [1943 c 247 § 44; Rem. Supp. 1943 § 3778–44.]

Reviser's note: *(1) "this act", see note following RCW 68.04.020.

** (2) "the effective date of this act" is midnight June 9, 1943, see preface 1943 session laws.

68.20.050 General powers of cemetery corporations. Unless otherwise limited by the law under which created[,] cemetery authorities shall in the conduct of their business have the same powers granted by law to corporations in general, including the right to contract such pecuniary obligations within the limitation of general law as may be required, and may secure them by mortgage, deed of trust, or otherwise upon their property. [1943 c 247 § 59; Rem. Supp. 1943 § 3778–59.]

68.20.060 Specific powers—Rule making and enforcement. A cemetery authority may make, adopt, amend, add to, revise, or modify, and enforce rules and regulations for the use, care, control, management, restriction and protection of all or any part of its cemetery and for the other purposes specified in RCW 68.20.061 through 68.20.067, 68.20.070 and 68.48.080. [1943 c 247 § 46; Rem. Supp. 1943 § 3778–46. Formerly RCW 68.20.070, part. FORMER PART OF SECTION: 1943 c 247 §§ 47 through 52 now codified as RCW 68.20.061 through 68.20.066.]

68.20.061 Specific powers—Control of property. It may restrict and limit the use of all property within its cemetery. [1943 c 247 § 47; Rem. Supp. 1943 § 3778–47. Formerly RCW 68.20.060, part.]

68.20.062 Specific powers—Regulation as to type of markers, monuments, etc. It may regulate the uniformity, class, and kind of all markers, monuments, and other structures within the cemetery and its subdivisions. [1943 c 247 § 48; Rem. Supp. 1943 § 3778–48. Formerly RCW 68.20.060, part.]

68.20.063 Specific powers—Regulation or prohibition as to the erection of monuments, effigies, etc. It may regulate or prohibit the erection of monuments, markers, effigies, and structures within any portion of the cemetery. [1943 c 247 § 49; Rem. Supp. 1943 § 3778–49. Formerly RCW 68.20.060, part.]

68.20.064 Specific powers—Regulation of plants and shrubs. It may regulate or prevent the introduction or care of plants or shrubs within the cemetery. [1943 c 247 § 50; Rem. Supp. 1943 § 3778–50. Formerly RCW 68.20.060, part.]

68.20.065 Specific powers—Prevention of interment. It may prevent interment in any part of the cemetery of human remains not entitled to interment and prevent the use of interment plots for purposes violative of its restrictions or rules and regulations. [1943 c 247 § 51; Rem. Supp. 1943 § 3778–51. Formerly RCW 68.20.060, part.]

68.20.066 Specific powers—Prevention of improper assemblages. It may regulate the conduct of persons and prevent improper assemblages in the cemetery. [1943 c 247 § 52; Rem. Supp. 1943 § 3778–52. Formerly RCW 68.20.060, part.]

68.20.067 Specific powers—Rules and regulations for general purposes. It may make and enforce rules and regulations for all other purposes deemed necessary by the cemetery authority for the proper conduct of the business of the cemetery, for the transfer of any plot or the right of interment, and the protection and safeguarding of the premises, and the principles, plans, and ideals on which the cemetery is conducted. [1943 c 247 § 53; Rem. Supp. 1943 § 3778–53. Formerly RCW 68.20.070, part.]

68.20.070 Rules and regulations—Posting. The rules and regulations made pursuant to RCW 68.20.060 shall be plainly printed or typewritten and maintained subject to inspection in the office of the cemetery authority or in such place or places within the cemetery as the cemetery authority may prescribe. [1943 c 247 § 54; Rem. Supp. 1943 § 3778–54. FORMER PART OF SECTION: 1943 c 247 §§ 46 and 53 now codified as RCW 68.20.060 and 68.20.067.]

68.20.080 Cities and counties may regulate cemeteries. Cities and counties are authorized to enact ordinances regulating or prohibiting the establishment of new cemeteries or the extension of existing ones and to give power to local planning commissions to pass upon and make recommendations to local legislative bodies concerning the establishment or extension of cemeteries. [1943 c 247 § 143; Rem. Supp. 1943 § 3778–143.]

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.20.090 Permit required, when. It shall be unlawful for any person, firm, or corporation to establish or maintain any cemetery or to extend the boundaries of any existing cemetery in this state without a permit first having been applied for and permission obtained in accordance with the city and county ordinance and other zoning or statutory provisions governing the same. [1943 c 247 § 144; Rem. Supp. 1943 § 3778–144.]

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.20.100 Crematory record of caskets. No crematory shall hereafter cremate the remains of any human body without making a permanent signed record of the color, shape and outside covering of the casket consumed with such body, said record to be open to inspection of any person lawfully entitled thereto. [1943 c 247 § 57; Rem. Supp. 1943 § 3778–57. FORMER PART OF SECTION: 1943 c 247 § 58 now codified as RCW 68.20.105.]

68.20.105 Crematory record of caskets—Penalty. Each person violating any provision of RCW 68.20.100 shall be guilty of a misdemeanor and each violation shall

constitute a separate offense. [1943 c 247 § 58; Rem. Supp. 1943 § 3778–58. Formerly RCW 68.20.100, part.]

68.20.110 Nonprofit cemetery association—Tax exempt land—Irreducible fund—Bonds. *Such association shall be authorized to purchase or take by gift or devise, and hold land exempt from execution and from any appropriation to public purposes for the sole purpose of a cemetery not exceeding eighty acres, which shall be exempt from taxation if intended to be used exclusively for burial purposes without discrimination as to race, color, national origin or ancestry, and in nowise with a view to profit of the members of such association: *Provided*, That when the land already held by the association is all practically used then the amount thereof may be increased by adding thereto not exceeding twenty acres at a time. Such association may by its bylaws provide that a stated percentage of the moneys realized from the sale of lots, donations or other sources of revenue, shall constitute an irreducible fund, which fund may be invested in such manner or loaned upon such securities as the association or the trustees thereof may deem proper. The interest or income arising from the irreducible fund, provided for in any bylaws, or so much thereof as may be necessary, shall be devoted exclusively to the preservation and embellishment of the lots sold to the members of such association, and where any bylaws has been enacted for the creation of an irreducible fund as herein provided for it cannot thereafter be amended in any manner whatever except for the purpose of increasing such fund. After paying for the land all the future receipts and income of such association subject to the provisions herein for the creation of an irreducible fund, whether from the sale of lots, from donations, rents or otherwise, shall be applied exclusively to laying out, preserving, protecting and embellishing the cemetery and the avenues leading thereto, and in the erection of such buildings as may be necessary or convenient for the cemetery purposes, and to paying the necessary expenses of the association. No debts shall be contracted in anticipation of any future receipts except for originally purchasing, laying out and embellishing the grounds and avenues, for which debts so contracted such association may issue bonds or notes and secure the same by way of mortgage upon any of its lands, excepting such lots as shall have been conveyed to the members thereof; and such association shall have power to adopt such rules and regulations as they shall deem expedient for disposing of and for conveying burial lots. [1961 c 103 § 2; 1899 c 33 § 3; RRS § 3766. Formerly RCW 68.20.110 and 68.24.200.]

*Reviser's note: The language "Such association" appears in 1899 c 33 which act provided for the creation of cemetery associations pursuant to 1895 c 158 which is now codified in chapter 24.16 RCW.

Construction—1961 c 103: See note following RCW 49.60.040.
Property taxes, exemptions: RCW 84.36.020.

68.20.120 Sold lots exempt from taxes, etc.—Nonprofit associations. Burial lots, sold by *such association shall be for the sole purpose of interment, and shall be exempt from taxation, execution, attachment or other

claims, lien or process whatsoever, if used as intended, exclusively for burial purposes and in nowise with a view to profit. [1899 c 33 § 5; RRS § 3768. Formerly RCW 68.24.210.]

***Reviser's note:** "such association", see note following RCW 68.20.110.

Cemetery property exempt from execution: RCW 68.24.220.

Cemetery property exempt from taxation: RCW 84.36.020.

68.20.130 Ground plans. All *such associations shall cause a plan of their grounds and of the blocks and lots by them laid out, to be made and recorded, such blocks and lots to be numbered by regular consecutive numbers, and shall have power to enclose, improve and adorn the grounds and avenues, to erect buildings for the use of the association and to prescribe rules for the designation and adorning of lots and for erecting monuments in the cemetery, and to prohibit any use, division, improvement or adornment of a lot which they may deem improper. An annual exhibit shall be made of the affairs of the association. The plan, or plat, hereinbefore required, shall be recorded by the proper county auditor for a fee not to exceed ten cents a lot, and if the actual cost of recording the same shall be less than ten cents a lot, then said auditor shall record the same at the actual cost thereof. [1905 c 64 § 1; 1899 c 33 § 6; RRS § 3769. Formerly RCW 68.24.230.]

***Reviser's note:** "such associations", see note following RCW 68.20.110.

County auditor's fees, generally: RCW 36.18.010.

Chapter 68.24 CEMETERY PROPERTY

Sections

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68.24.010 Right to acquire property. Cemetery authorities may take by purchase, donation or devise, property consisting of lands, mausoleums, crematories, and columbariums, or other property within which the interment of the dead may be authorized by law. [1943 c 247 § 61; Rem. Supp. 1943 § 3778-61.]

Cemetery sites on state lands: RCW 79.01.096.

68.24.020 Surveys and maps. Every cemetery authority, from time to time as its property may be required for cemetery purposes, shall:

(1) In case of land, survey and subdivide it into sections, blocks, plots, avenues, walks, or other subdivisions; make a good and substantial map or plat showing the sections, plots, avenues, walks or other subdivisions, with descriptive names or numbers.

(2) In case of a mausoleum, or columbarium, it shall make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevation, and other divisions, with descriptive names or numbers. [1943 c 247 § 62; Rem. Supp. 1943 § 3778-62.]

68.24.030 Declaration of dedication and maps—Filing. The cemetery authority shall file the map or plat in the office of the recorder of the county in which all or a portion of the property is situated. The cemetery authority shall also file for record in the county recorder's office a written declaration of dedication of the property delineated on the plat or map, dedicating the property exclusively to cemetery purposes. [1943 c 247 § 63; Rem. Supp. 1943 § 3778-63.]

County auditor: Chapter 36.22 RCW.

County auditor fees, generally: RCW 36.18.010.

68.24.040 Dedication, when complete. Upon the filing of the map or plat and the filing of the declaration for record, the dedication is complete for all purposes and thereafter the property shall be held, occupied, and used exclusively for a cemetery and for cemetery purposes. [1943 c 247 § 64; Rem. Supp. 1943 § 3778-64.]

68.24.050 Constructive notice. The filed map or plat and the recorded declaration are constructive notice to all persons of the dedication of the property to cemetery purposes. [1943 c 247 § 66; Rem. Supp. 1943 § 3778-66.]

68.24.060 Maps and plats—Amendment. Any part or subdivision of the property so mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat filed, so long as such change does not disturb the interred remains of any deceased person. [1943 c 247 § 65; Rem. Supp. 1943 § 3778-65.]

68.24.070 Permanency of dedication. After property is dedicated to cemetery purposes pursuant to RCW 68.24.010 through 68.24.060, neither the dedication, nor the title of a plot owner, shall be affected by the dissolution of the cemetery authority, by nonuser on its part, by alienation of the property, by any incumbrances, by sale under execution, or otherwise except as provided in *this act. [1943 c 247 § 67; Rem. Supp. 1943 § 3778-67.]

***Reviser's note:** "this act", see note following RCW 68.04.020.

68.24.080 Rule against perpetuities, etc., inapplicable. Dedication to cemetery purposes pursuant to *this

act is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property, but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the interment of human remains, and a duty to, and for the benefit of, the general public. [1943 c 247 § 68; Rem. Supp. 1943 § 3778–68.]

*Reviser's note: "this act", see note following RCW 68.04.020.

68.24.090 Removal of dedication—Procedure. Property dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes, unless and until the dedication is removed from all or any part of it by an order and decree of the superior court of the county in which the property is situated, in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(1) That no interments were made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed.

(2) That the portion of the property from which dedication is sought to be removed is not being used for interment of human remains. [1943 c 247 § 76; Rem. Supp. 1943 § 3778–76.]

68.24.100 Notice of hearing. The notice of hearing provided in RCW 68.24.090 shall be given by publication once a week for at least three consecutive weeks in a newspaper of general circulation in the county where said cemetery is located, and the posting of copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed. Said notice shall:

(1) Describe the portion of the cemetery property sought to be removed from dedication.

(2) State that all remains have been removed or that no interments have been made in the portion of the cemetery property sought to be removed from dedication.

(3) Specify the time and place of the hearing. [1943 c 247 § 77; Rem. Supp. 1943 § 3778–77.]

68.24.110 Sale of plots. After filing the map or plat and recording the declaration of dedication, a cemetery authority may sell and convey plots subject to such rules and regulations as may be then in effect or thereafter adopted by the cemetery authority, and subject to such other and further limitations, conditions and restrictions as may be inserted in or made a part of the declaration of dedication by reference, or included in the instrument of conveyance of such plot. [1943 c 247 § 70; Rem. Supp. 1943 § 3778–70. FORMER PART OF SECTION: 1943 c 247 § 72 now codified as RCW 68.24.115.]

68.24.115 Execution of conveyances. All conveyances made by a cemetery authority shall be signed by such officer or officers as are authorized by the cemetery authority. [1943 c 247 § 72; Rem. Supp. 1943 § 3778–72. Formerly RCW 68.24.110, part.]

68.24.120 Plots indivisible. All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the cemetery authority, or as provided by law. [1943 c 247 § 71; Rem. Supp. 1943 § 3778–71.]

68.24.130 Sales for resale prohibited—Penalty. It shall be unlawful for any person, firm or corporation to sell or offer to sell a cemetery plot upon the promise, representation or inducement of resale at a financial profit. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense. [1943 c 247 § 73; Rem. Supp. 1943 § 3778–73.]

68.24.140 Commission on sales prohibited—Penalty. It shall be unlawful for a cemetery authority to pay or offer to pay to any person, firm or corporation, directly or indirectly, a commission or bonus or rebate or other thing of value for the sale of a plot or services. This shall not apply to a person regularly employed by the cemetery authority for such purpose. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense. [1943 c 247 § 74; Rem. Supp. 1943 § 3778–74.]

68.24.150 Employment of "runners" prohibited—Penalty. Every person who pays or causes to be paid or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in RCW 68.24.140, any commission or bonus or rebate, or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any crematory or cemetery, is guilty of a misdemeanor and each violation shall constitute a separate offense. [1943 c 247 § 75; Rem. Supp. 1943 § 3778–75.]

68.24.160 Liens subordinate to dedication. All mortgages, deeds of trust and other liens of any nature, hereafter contracted, placed or incurred upon property which has been and was at the time of the creation or placing of the lien, dedicated as a cemetery pursuant to this part, or upon property which is afterwards, with the consent of the owner of any mortgage, trust deed or lien, dedicated to cemetery purposes pursuant to this part, shall not affect or defeat the dedication, but the mortgage, deed of trust, or other lien is subject and subordinate to such dedication and any and all sales made upon foreclosure are subject and subordinate to the dedication for cemetery purposes. [1943 c 247 § 60; Rem. Supp. 1943 § 3778–60.]

Effective date—1943 c 247: See note following RCW 68.20.040.

68.24.170 Record of ownership and transfers. A record shall be kept of the ownership of all plots in the cemetery which have been conveyed by the cemetery authority and of all transfers of plots in the cemetery. No transfer of any plot, heretofore or hereafter made, or any right of interment, shall be complete or effective until recorded on the books of the cemetery authority. [1943 c 247 § 40; Rem. Supp. 1943 § 3778–40.]

FORMER PART OF SECTION: 1943 c 247 § 41 now codified as RCW 68.24.175.]

68.24.175 Inspection of records. The records shall be open to inspection during the customary office hours of the cemetery. [1943 c 247 § 41; Rem. Supp. 1943 § 3778-41. Formerly RCW 68.24.170, part.]

68.24.180 Opening of roads, railroads through cemetery—Consent required—Exception. After dedication pursuant to *this act, and as long as the property remains dedicated to cemetery purposes, no railroad, street, road, alley, pipe line, pole line, or other public thoroughfare or utility shall be laid out, through, over, or across any part of it without the consent of the cemetery authority owning and operating it, or of not less than two-thirds of the owners of interment plots: *Provided*, That so long as the action is commenced prior to March 31, 1961, the Washington state highway commission may condemn for state highway purposes for Primary State Highway No. 14 in the vicinity of Gig Harbor land in any burial ground or cemetery in the following cases: (1) Where no organized or known authority is in charge of any such cemetery, or (2) where the necessary consent cannot be obtained and the court shall find that considerations of highway safety necessitate the taking of such land. Any judgment entered in such condemnation proceedings shall provide and require that before any entry is made on the land condemned for the purpose of construction or for the use of the same for state highway purposes, the state shall, at its own expense, remove or cause to be removed, from such land any bodies buried therein and suitably reinter them elsewhere to the satisfaction of relatives, if they can be found. [1959 c 217 § 1; 1947 c 69 § 1; 1943 c 247 § 69; Rem. Supp. 1947 § 3778-69.]

*Reviser's note: "this act", see note following RCW 68.04.020.
State highway commission: Chapter 47.01 RCW.

68.24.190 Opening road through cemetery—Penalty. Every person who shall make or open any road, or construct any railway, turnpike, canal, or other public easement over, through, in, or upon, such part of any inclosure as may be used for the burial of the dead, without authority of law or the consent of the owner thereof, shall be guilty of a misdemeanor. [1909 c 249 § 241; RRS § 2493.]

68.24.220 Burying place exempt from execution. Whenever any part of *such burying ground shall have been designated and appropriated by the proprietors thereof as the burying place of any particular person or family, the same shall not be liable to be taken or disposed of by any warrant or execution, for any tax or debt whatever; nor shall the same be liable to be sold to satisfy the demands of creditors whenever the estate of such owner shall be insolvent. [1857 p 28 § 2; RRS § 3760.]

*Reviser's note: The language "such burying ground" appears in 1856-57 p 28 which act provided for the creation of corporations for the purpose of establishing a burying ground or place of sepulture.
Cemetery property exempt from taxation: RCW 84.36.020.

68.24.240 Certain cemetery lands exempt from taxes, etc.—1901 c 147. Upon compliance with the requirements of *this act said lands shall forever be exempt from taxation, judgment and other liens and executions. [1901 c 147 § 4; RRS § 3763.]

*Reviser's note: "this act" appears in 1901 c 147 the remaining sections of which act were repealed by 1943 c 247 § 148. These sections read as follows:

"Section 1. Any person owning any land, exclusive of encumbrances of any kind, situate two miles outside of the corporate limits of any incorporated city or town, may have the same reserved exclusively for burial and cemetery purposes by complying with the terms of this act, provided said lands so sought to be reserved shall not exceed in area one acre.

Sec. 2. Such person or persons shall cause such land to be surveyed and platted.

Sec. 3. A deed of dedication of said tract for burial and cemetery purposes with a copy of said plat shall be filed with the county auditor of the county in which said lands are situated and the title thereto shall be and remain in the owner, his heirs and assigns, subject to the trust aforesaid."

Property taxes, exemptions: RCW 84.36.020.

Chapter 68.28 MAUSOLEUMS AND COLUMBARIUMS

Sections

68.28.010	Sections applicable to mausoleums, columbariums, etc.
68.28.020	Buildings converted to use as a place of interment.
68.28.030	Standards of construction.
68.28.040	Fireproof construction.
68.28.050	Ordinances and specifications to be complied with.
68.28.060	Improper construction a nuisance—Penalty.
68.28.065	Court to fix costs.
68.28.070	Construction in compliance with existing laws.

68.28.010 Sections applicable to mausoleums, columbariums, etc. RCW 68.28.020 through 68.28.070, 68.20.080, 68.20.090, 68.48.040 and 68.48.060, apply to all buildings, mausoleums and columbariums used or intended to be used for the interment of the remains of fifteen or more persons whether erected under or above the surface of the earth where any portion of the building is exposed to view or, when interment is completed, is less than three feet below the surface of the earth and covered by earth. [1943 c 247 § 134; Rem. Supp. 1943 § 3778-134.]

68.28.020 Buildings converted to use as a place of interment. A building not erected for, or which is not used as, a place of interment of human remains which is converted or altered for such use is subject to *this act. [1943 c 247 § 135; Rem. Supp. 1943 § 3778-135.]

*Reviser's note: "this act", see note following RCW 68.04.020.

68.28.030 Standards of construction. No building or structure intended to be used for the interment of human remains shall be constructed, and a building not used for the interment of human remains shall not be altered for use or used for interment purposes, unless constructed of such material and workmanship as will insure its durability and permanence as dictated and determined at the time by modern mausoleum construction and engineering science. [1943 c 247 § 136; Rem. Supp. 1943 § 3778-136.]

68.28.040 Fireproof construction. All mausoleums or columbariums hereafter constructed shall be of class A fireproof construction. [1943 c 247 § 137; Rem. Supp. 1943 § 3778-137.]

Effective date—1943 c 247: See note following RCW 68.20.040.

68.28.050 Ordinances and specifications to be complied with. If the proposed site is within the jurisdiction of a city having ordinances and specifications governing class A construction, the provisions of the local ordinances and specifications shall not be violated. [1943 c 247 § 138; Rem. Supp. 1943 § 3778-138.]

68.28.060 Improper construction a nuisance—Penalty. Every owner or operator of a mausoleum or columbarium erected in violation of *this act is guilty of maintaining a public nuisance and upon conviction is punishable by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in a county jail for not less than one month nor more than six months, or by both; and, in addition is liable for all costs, expenses and disbursements paid or incurred in prosecuting the case. [1943 c 247 § 140; Rem. Supp. 1943 § 3778-140.]

*Reviser's note: "this act", see note following RCW 68.04.020.

68.28.065 Court to fix costs. The costs, expenses and disbursements shall be fixed by the court having jurisdiction of the case. [1943 c 247 § 141; Rem. Supp. 1943 § 3778-141.]

68.28.070 Construction in compliance with existing laws. The penalties of *this act shall not apply as to any building which, at the time of construction was constructed in compliance with the laws then existing, if its use is not in violation of the laws for the protection of public health. [1943 c 247 § 142; Rem. Supp. 1943 § 3778-142.]

*Reviser's note: "this act", see note following RCW 68.04.020.

Chapter 68.32

TITLE AND RIGHTS TO CEMETERY PLOTS

Sections

68.32.010	Presumption as to title.
68.32.020	Vested right of spouse.
68.32.030	Vested right—Termination.
68.32.040	Descent of title to plot.
68.32.050	Affidavit as authorization.
68.32.060	When plot inalienable.
68.32.070	Joint tenants—Vested rights.
68.32.080	Joint tenants—Survivorship.
68.32.090	Joint tenants—Identification.
68.32.100	Co-owners may designate representative.
68.32.110	Order of interment—General.
68.32.120	Order of interment, when no parent or child survives.
68.32.130	Waiver of right of interment.
68.32.140	Termination of vested right by waiver.
68.32.150	Limitations on vested rights.
68.32.160	Conveyance of plot to cemetery authority, effect.
68.32.170	Exemption from inheritance tax.

68.32.010 Presumption as to title. All plots conveyed to individuals are presumed to be the sole and separate

property of the owner named in the instrument of conveyance. [1943 c 247 § 88; Rem. Supp. 1943 § 3778-88.]

68.32.020 Vested right of spouse. The spouse of an owner of any plot containing more than one interment space has a vested right of interment of his remains in the plot and any person thereafter becoming the spouse of the owner has a vested right of interment of his remains in the plot if more than one interment space is unoccupied at the time the person becomes the spouse of the owner. [1943 c 247 § 89; Rem. Supp. 1943 § 3778-89.]

68.32.030 Vested right—Termination. No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of a vested right of interment, except that a final decree of divorce between them terminates the vested right of interment unless otherwise provided in the decree. [1943 c 247 § 90; Rem. Supp. 1943 § 3778-90.]

68.32.040 Descent of title to plot. If no interment is made in an interment plot which has been transferred by deed or certificate of ownership to an individual owner, or if all remains previously interred are lawfully removed, upon the death of the owner, unless he has disposed of the plot either in his will by specific devise or by a written declaration filed and recorded in the office of the cemetery authority, the plot descends to the heirs at law of the owner subject to the rights of interment of the decedent and his surviving spouse. [1943 c 247 § 91; Rem. Supp. 1943 § 3778-91.]

Probate: Title 11 RCW.

68.32.050 Affidavit as authorization. An affidavit by a person having knowledge of the facts setting forth the fact of the death of the owner and the name of the person or persons entitled to the use of the plot pursuant to RCW 68.32.010 through 68.32.040, is complete authorization to the cemetery authority to permit the use of the unoccupied portions of the plot by the person entitled to the use of it. [1943 c 247 § 93; Rem. Supp. 1943 § 3778-93.]

68.32.060 When plot inalienable. Whenever an interment of the remains of a member or of a relative of a member of the family of the record owner or of the remains of the record owner is made in a plot transferred by deed or certificate of ownership to an individual owner and the owner dies without making disposition of the plot either in his will by a specific devise, or by a written declaration filed and recorded in the office of the cemetery authority, the plot thereby becomes inalienable and shall be held as the family plot of the owner. [1943 c 247 § 98; Rem. Supp. 1943 § 3778-98.]

68.32.070 Joint tenants—Vested rights. In a conveyance to two or more persons as joint tenants each joint tenant has a vested right of interment in the plot conveyed. [1943 c 247 § 94; Rem. Supp. 1943 § 3778-94.]

68.32.080 Joint tenants—Survivorship. Upon the death of a joint tenant, the title to the plot held in joint tenancy immediately vests in the survivors, subject to the vested right of interment of the remains of the deceased joint tenant. [1943 c 247 § 95; Rem. Supp. 1943 § 3778–95.]

Joint tenants, simultaneous death: RCW 11.05.030.

68.32.090 Joint tenants—Identification. An affidavit by any person having knowledge of the facts setting forth the fact of the death of one joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot, when filed with the cemetery authority operating the cemetery in which the plot is located, is complete authorization to the cemetery authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving joint tenants or their successors in interest. [1943 c 247 § 96; Rem. Supp. 1943 § 3778–96.]

68.32.100 Co-owners may designate representative. When there are several owners of a plot, or of rights of interment in it, they may designate one or more persons to represent the plot and file written notice of designation with the cemetery authority. In the absence of such notice or of written objection to its so doing, the cemetery authority is not liable to any owner for interring or permitting an interment in the plot upon the request or direction of any co-owner of the plot. [1943 c 247 § 97; Rem. Supp. 1943 § 3778–97.]

68.32.110 Order of interment—General. In a family plot one grave, niche or crypt may be used for the owner's interment; one for the owner's surviving spouse, if any, who by law has a vested right of interment in it; and in those remaining, if any, the parents and children of the deceased owner in order of death may be interred without the consent of any person claiming any interest in the plot. [1943 c 247 § 99; Rem. Supp. 1943 § 3778–99.]

68.32.120 Order of interment, when no parent or child survives. If no parents or child survives, the right of interment goes in the order of death first, to the spouse of any child of the record owner, and second, in the order of death to the next heirs at law of the owner or the spouse of any heir at law. [1943 c 247 § 100; Rem. Supp. 1943 § 3778–100.]

68.32.130 Waiver of right of interment. Any surviving spouse, parent, child, or heir having a right of interment in a family plot may waive such right in favor of any other relative or spouse of a relative of the deceased owner; and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot. [1943 c 247 § 101; Rem. Supp. 1943 § 3778–101.]

68.32.140 Termination of vested right by waiver. A vested right of interment may be waived and is terminated upon the interment elsewhere of the remains of the person in whom vested. [1943 c 247 § 102; Rem. Supp. 1943 § 3778–102.]

68.32.150 Limitations on vested rights. No vested right of interment gives to any person the right to have his remains interred in any interment space in which the remains of any deceased person having a prior vested right of interment have been interred, nor does it give any person the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules and regulations of the cemetery in which the interment space is located. [1943 c 247 § 103; Rem. Supp. 1943 § 3778–103.]

68.32.160 Conveyance of plot to cemetery authority, effect. A cemetery authority may take and hold any plot conveyed or devised to it by the plot owner so that it will be inalienable, and interments shall be restricted to the persons designated in the conveyance or devise. [1943 c 247 § 104; Rem. Supp. 1943 § 3778–104.]

68.32.170 Exemption from inheritance tax. Cemetery property passing to an individual by reason of the death of the owner is exempt from all inheritance taxes. [1943 c 247 § 92; Rem. Supp. 1943 § 3778–92.]

Chapter 68.36 ABANDONED LOTS

Sections

68.36.010	Sale of abandoned space—Presumption of abandonment.
68.36.020	Notice—Requisites—Limitation on placing.
68.36.030	Petition for order of abandonment—Notice and hearing.
68.36.040	Service of notice.
68.36.050	Hearing—Order—Attorney's fee.
68.36.060	Contract for care before adjudication.
68.36.070	Contract for care within one year after adjudication.
68.36.080	Sale after one year.
68.36.090	Disposition of proceeds.
68.36.100	Petition may cover several lots.

68.36.010 Sale of abandoned space—Presumption of abandonment. The ownership of or right in or to unoccupied cemetery space in this state shall, upon abandonment, be subject to forfeiture and sale by the person, association, corporation or municipality having ownership or management of the cemetery containing such unoccupied cemetery space, for the purpose of providing for *perpetual care. The continued failure by an owner to maintain or care for an unoccupied cemetery lot, unoccupied part of lot, unoccupied lots or parts of lots for a period of five years shall create and establish a presumption that the same has been abandoned. [1943 c 247 § 78; Rem. Supp. 1943 § 3778–78.]

*Reviser's note: The term "perpetual care" referred to herein originally appeared throughout this chapter and chapters 68.40 and 68.44 RCW. The legislature in 1953 c 290 amended most sections in these chapters to read "endowment care" 1953 c 290 § 24 provides that it is a misdemeanor for any cemetery authority, cemetery broker, etc., to represent that any fund set up for maintaining care is perpetual. See RCW 68.40.085.

68.36.020 Notice—Requisites—Limitation on placing. Before such five year period shall commence to run, the owner or manager of the cemetery shall place upon and during such five year period shall maintain

upon such unoccupied cemetery space a suitable notice, setting forth the date the notice is placed thereon and stating that such unoccupied space is subject to forfeiture and sale by the owner or manager of the cemetery to provide for *perpetual care, if the owner of such unoccupied space fails during the next five years following the date of the notice to maintain or care for the same or unless the owner of such unoccupied space contracts for the *perpetual care of the same: *Provided, however,* That such a notice cannot be placed on the unoccupied space in any cemetery lot until twenty years have elapsed since the last interment in any such lot of a member of the immediate family of the record owner. Members of the immediate family shall be construed to include surviving spouse, children, parents, and brothers and sisters. [1943 c 247 § 79; Rem. Supp. 1943 § 3778-79.]

*Reviser's note: "perpetual care", see note following RCW 68.36.010.

68.36.030 Petition for order of abandonment—
Notice and hearing. After such five year period, the owner or manager of the cemetery may file in the office of the county clerk for the county in which the cemetery is located a verified petition, setting forth its ownership or management of the cemetery, the facts relating to the continued failure by the owner for a period of five consecutive years to maintain or care for such cemetery lot, part of lot, lots or parts of lots and such facts relating to the ownership thereof as petitioner may have, and asking for an order of the superior court for such county, adjudging the lot, part of lot, lots or parts of lots to have been abandoned.

At the time of filing such petition, the owner or manager of the cemetery shall apply for and the superior court for such county shall fix a time for the hearing of the petition not less than sixty days nor more than ninety days from the time of the application. Not less than sixty days before the time fixed for the hearing of the petition, notice of the hearing and the nature and object of the same shall be given to the owner of such unoccupied space, as herein provided. [1943 c 247 § 80; Rem. Supp. 1943 § 3778-80.]

68.36.040 Service of notice. The notice may be served personally upon the owner, or may be given by the mailing of the notice by registered mail to the owner to his last known address and by publishing the notice three times in a legal newspaper published in the county in which the cemetery is located, and if there be no legal newspaper in the county, then in a legal newspaper published in an adjoining county, and if there be no legal newspaper in an adjoining county, then in a legal newspaper published at the capital of the state. In the event that the whereabouts of the owner is unknown, or if the owner be unknown, then the notice may be given to such owner, unknown owner or unknown claimant, and all other persons or parties claiming any right, title or interest therein, by publishing the notice three times in a legal newspaper as aforesaid. The affidavit of the owner or manager of the cemetery involved to the effect that such owner or claimant is unknown to him and that he

exercised diligence in attempting to locate such unknown parties shall, if filed in the proceeding, be conclusive to that effect. [1943 c 247 § 81; Rem. Supp. 1943 § 3778-81.]

68.36.050 Hearing—Order—Attorney's fee. Thereupon, such owner or claimant may appear and make answer to the allegations of said petition, and in case of his failure so to do prior to the day fixed for hearing, his default shall be entered and it shall then be the duty of the superior court for such county to immediately enter an order adjudging such unoccupied space to have been abandoned and subject to sale at the expiration of one year by the person, association, corporation or municipality having ownership or management of the cemetery containing the same. In the event the owner or claimant shall appear and file his answer prior to the day fixed for the hearing, the presumption of abandonment shall no longer exist, and on the day fixed for the hearing of said petition or on any subsequent day to which the hearing of the cause is adjourned, the allegations and proof of the parties shall be presented to the court and if the court shall determine therefrom that there has been a continued failure to maintain or care for such unoccupied space for a period of five consecutive years preceding the filing of said petition, an order shall be entered accordingly adjudging such unoccupied space to have been abandoned and subject to sale at the expiration of one year by the person, association, corporation or municipality having ownership of the cemetery containing the same. Upon any adjudication of abandonment, the court shall fix such sum as it shall deem reasonable as an attorney's fee for petitioner's attorney for each lot, part of lot, lots or parts of lots adjudged to have been abandoned in such proceedings. [1943 c 247 § 82; Rem. Supp. 1943 § 3778-82.]

68.36.060 Contract for care before adjudication. If at any time before the adjudication of abandonment the owner of an unoccupied space contracts with the owner or manager of the cemetery for the endowment care of the space, the court shall dismiss the proceedings as to such unoccupied space. [1953 c 290 § 1; 1943 c 247 § 83; Rem. Supp. 1943 § 3778-83.]

68.36.070 Contract for care within one year after adjudication. If at any time within one year after the adjudication of abandonment, the former owner of the unoccupied space shall contract for its endowment care, and reimburse the owner or manager of the cemetery for the expense of the proceedings, including attorney's fees, the space shall not be sold and the order adjudging it to have been abandoned shall be vacated upon petition of the former owner. [1953 c 290 § 2; 1943 c 247 § 84; Rem. Supp. 1943 § 3778-84.]

68.36.080 Sale after one year. One year after the entry of the order adjudging such lot, part of lot, lots or parts of lots to have been abandoned, the owner or manager of the cemetery in which the same is located shall have the power to sell the same, in whole or in part, at public or private sale, and convey by deed good, clear

and sufficient title thereto. [1943 c 247 § 85; Rem. Supp. 1943 § 3778-85.]

68.36.090 Disposition of proceeds. Not more than twenty percent of the funds realized from the sale of abandoned space shall be used to defray the expenses of the proceedings to abandon, and the improving of it in such manner as to place it in condition for care, and the balance shall be placed immediately in a trust fund or shall be immediately transferred to a nonprofit organization to be used exclusively for the endowment care and maintenance of the cemetery. [1953 c 290 § 3; 1943 c 247 § 86; Rem. Supp. 1943 § 3778-86.]

68.36.100 Petition may cover several lots. In any one petition for abandonment, a petitioner may, irrespective of diversity of ownership, include in any such petition as many lots or parts of lots as come within the provisions of *this act. The petition for abandonment shall be entitled: "In the Matter of the Abandonment, Forfeiture and Sale of Unoccupied and Uncared for Space located in ----- Cemetery." [1943 c 247 § 87; Rem. Supp. 1943 § 3778-87.]

*Reviser's note: "this act", see note following RCW 68.04.020.

Chapter 68.40

ENDOWMENT AND NONENDOWMENT CARE

Sections

68.40.010	Endowment care cemetery defined—Deposit required.
68.40.020	Nonendowment care section.
68.40.030	Endowment care cemetery—Identifying sign.
68.40.040	Endowment care fiscal report.
68.40.050	Annual revision of report.
68.40.060	May accept property in trust—Application of proceeds.
68.40.070	Nonendowment care cemetery defined.
68.40.080	Nonendowment care cemetery—Identifying sign.
68.40.085	Representing fund as perpetual—Penalty.
68.40.090	Penalty.

68.40.010 Endowment care cemetery defined—Deposit required. An endowment care cemetery is one which deposits in its endowment care fund not less than the following amounts for plots sold: Ten percent of the gross sales price, with a minimum of ten dollars for each adult grave; five dollars for each niche; and thirty dollars for each crypt.

The deposits shall be made not later than the twentieth day of the month following the final payment on the sale price.

Any endowment care cemetery hereafter established shall also have deposited in its endowment care fund the additional sum of twenty-five thousand dollars before disposing of any plot or making any sale thereof: *Provided*, That the requirement of an additional deposit of twenty-five thousand dollars shall not apply to any cemetery in existence on January 1, 1961, having an area not exceeding ten acres. [1961 c 133 § 2; 1953 c 290 § 4; 1943 c 247 § 118; Rem. Supp. 1943 § 3778-118.]

68.40.020 Nonendowment care section. An endowment care cemetery may contain a small section which may be sold without endowment care, if the section is

separately set off from the remainder of the cemetery and if signs are kept prominently placed around the section designating it as a "nonendowment care section," in lettering equivalent to a minimum of forty-eight point black type. There shall be printed or stamped at the head of all contracts and certificates of ownership or deeds referring to plots in the section, the phrase "non-endowment care" in lettering equivalent to a minimum of ten point number two black type. [1953 c 290 § 5; 1943 c 247 § 120; Rem. Supp. 1943 § 3778-120.]

68.40.030 Endowment care cemetery—Identifying sign. An endowment care cemetery shall post in a conspicuous place in the office or offices where sales are conducted and in a conspicuous place at or near the entrance of the cemetery or its administration building, and readily accessible to the public, a legible sign with the following phrase: "This is an endowment care property." [1953 c 290 § 6; 1943 c 247 § 121; Rem. Supp. 1943 § 3778-121.]

68.40.040 Endowment care fiscal report. An endowment care cemetery shall file in its principal office a written report which shall be available to any plot owner, and which shall state the amount of the principal of the endowment care fund and the total amount invested in lawful investments, and the amount of cash on hand, which shall show the true financial condition of the trust. [1953 c 290 § 7; 1943 c 247 § 122; Rem. Supp. 1943 § 3778-122.]

68.40.050 Annual revision of report. All the information appearing on the report filed in the cemetery office shall be revised annually and verified by the president and secretary, or two officers authorized by the cemetery authority. [1943 c 247 § 124; Rem. Supp. 1943 § 3778-124.]

68.40.060 May accept property in trust—Application of proceeds. The cemetery authority of an endowment care cemetery may accept any property bequeathed, granted, or given to it in trust and may apply the principal, or proceeds, or income to any or all of the following purposes:

(1) Improvement or embellishment of all or any part of the cemetery or any lot in it;

(2) Erection, renewal, repair, or preservation of any monument, fence, building, or other structure in the cemetery;

(3) Planting or cultivation of trees, shrubs, or plants in or around any part of the cemetery;

(4) Special care or ornamenting of any part of any plot, section, or building in the cemetery; and

(5) Any purpose or use consistent with the purpose for which the cemetery was established or is maintained. [1953 c 290 § 8; 1943 c 247 § 129; Rem. Supp. 1943 § 3778-129.]

68.40.070 Nonendowment care cemetery defined. A nonendowment care cemetery is one that does not deposit in an endowment care fund the minimum

required of an endowment care cemetery. [1953 c 290 § 9; 1943 c 247 § 119; Rem. Supp. 1943 § 3778-119.]

68.40.080 Nonendowment care cemetery—Identifying sign. A nonendowment care cemetery shall post in a conspicuous place in the office or offices where sales are conducted and in a conspicuous place at or near the entrance of the cemetery or its administration building and readily accessible to the public, a legible sign with the following phrase: "This is not an endowment care property." This phrase likewise shall be printed or stamped at the head of all contracts, certificates of ownership, or deeds. [1953 c 290 § 10; 1943 c 247 § 123; Rem. Supp. 1943 § 3778-123.]

68.40.085 Representing fund as perpetual—Penalty. It is a misdemeanor for any cemetery authority, its officers, employees, or agents, or a cemetery broker or salesman to represent that an endowment care fund, or any other fund set up for maintaining care, is perpetual. [1953 c 290 § 24.]

68.40.090 Penalty. Any person, partnership, corporation, association, or his or its agents or representatives who shall violate any of the provisions of RCW 68.40-.010 through 68.40.050, 68.40.070, and 68.40.080, or make any false statement appearing on said sign, contract, agreement, receipt, statement, literature or other publication shall be guilty of a misdemeanor. [1943 c 247 § 125; Rem. Supp. 1943 § 3778-125.]

Chapter 68.44 ENDOWMENT CARE FUND

Sections

68.44.010	Fund authorized—Investments.
68.44.020	Use and care of funds.
68.44.030	Authorized investments.
68.44.050	Loan to officers prohibited.
68.44.060	Unauthorized loans—Penalty.
68.44.070	Purpose of endowment care—Validity.
68.44.080	Plans for care—Source of fund.
68.44.090	Covenant to care for cemetery.
68.44.100	Agreement by owner to care for plot.
68.44.110	Trustees of fund.
68.44.120	Directors as trustees—Secretary.
68.44.130	Bank or trust company as trustee.
68.44.140	Compensation of trustees.
68.44.150	Annual report of condition of fund.
68.44.160	Contributions.
68.44.170	Use of income from fund.

68.44.010 Fund authorized—Investments. Any cemetery authority may place its cemetery under endowment care, and establish, maintain, and operate an irreducible endowment care fund. Endowment care and special care funds may be commingled for investment and the income therefrom shall be divided between the funds in the proportion that each contributed to the sum invested. The funds may be held in the name of the cemetery authority or its directors or in the name of the trustees appointed by the cemetery authority. [1953 c 290 § 11; 1943 c 247 § 105; Rem. Supp. 1943 § 3778-105.]

68.44.020 Use and care of funds. Endowment care funds shall not be used for any purpose other than to provide, through income only, for the endowment care stipulated in the instrument by which the fund was established, and shall be kept separate and distinct from all other funds. The principal shall forever remain irreducible and inviolable. [1953 c 290 § 12. Prior: (i) 1943 c 247 § 106; Rem. Supp. 1943 § 3778-106. (ii) 1943 c 247 § 126; Rem. Supp. 1943 § 3778-126.]

68.44.030 Authorized investments. Endowment care funds shall be kept invested in accordance with the provisions of RCW 30.24.020. [1953 c 290 § 13; 1943 c 247 § 127; Rem. Supp. 1943 § 3778-127.]

68.44.050 Loan to officers prohibited. No director or officer of the cemetery authority or trustee of the endowment care or special care funds shall borrow any of such funds for himself, directly or indirectly. [1953 c 290 § 15; 1943 c 247 § 131; Rem. Supp. 1943 § 3778-131.]

68.44.060 Unauthorized loans—Penalty. Every director or officer authorizing or consenting to a loan, and the person who receives a loan, in violation of *this article are severally guilty of a misdemeanor. [1943 c 247 § 133; Rem. Supp. 1943 § 3778-133.]

*Reviser's note: The term "this article" appears in 1943 c 247, the general cemetery act, which was not divided into articles. For the codification of 1943 c 247, see note following RCW 68.04.020.

68.44.070 Purpose of endowment care—Validity. The endowment care and special care funds and all payments or contributions thereto are hereby expressly permitted for charitable and eleemosynary purposes. Endowment care and such contributions are provisions for the discharge of a duty from the persons contributing to the persons interred and to be interred in the cemetery and provisions for the benefit and protection of the public by preserving and keeping cemeteries from becoming unkempt and places of reproach and desolation in the communities in which they are situated. No payment, or contribution for general endowment care, is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the trust, nor is the fund or any contribution to it invalid as violating any law against perpetuities, or the suspension of the power of alienation of title to property. [1953 c 290 § 16. Prior: (i) 1943 c 247 § 130; Rem. Supp. 1943 § 3778-130. (ii) 1943 c 247 § 117; Rem. Supp. 1943 § 3778-117.]

68.44.080 Plans for care—Source of fund. The cemetery authority may from time to time adopt plans for the general care, maintenance, and embellishment of its cemetery, and charge and collect from all purchasers of plots such reasonable sum as it deems will aggregate a fund, the reasonable income from which will provide care, maintenance, and embellishment on an endowment basis. [1953 c 290 § 17; 1943 c 247 § 108; Rem. Supp. 1943 § 3778-108.]

68.44.090 Covenant to care for cemetery. Upon payment of the purchase price and the amount fixed as a proportionate contribution for endowment care, there may be included in the deed of conveyance or by separate instrument, an agreement to care, in accordance with the plan adopted, for the cemetery and its appurtenances on an endowment basis to the proportionate extent the income received by the cemetery authority from the contribution will permit. [1953 c 290 § 18; 1943 c 247 § 109; Rem. Supp. 1943 § 3778-109.]

68.44.100 Agreement by owner to care for plot. Upon the application of an owner of a plot, and upon the payment by him of the amount fixed as a reasonable and proportionate contribution for endowment care, a cemetery authority may enter into an agreement with him for the care of his plot and its appurtenances. [1953 c 290 § 19; 1943 c 247 § 110; Rem. Supp. 1943 § 3778-110.]

68.44.110 Trustees of fund. The cemetery authority may appoint a board of not less than three members as trustees for its endowment care fund, who shall hold office subject to the direction of the cemetery authority. [1953 c 290 § 20; 1943 c 247 § 111; Rem. Supp. 1943 § 3778-111.]

68.44.120 Directors as trustees—Secretary. The directors of a cemetery authority may be the trustees of its endowment care fund. When the fund is in the care of the directors as a board of trustees the secretary of the cemetery authority shall act as its secretary and keep a true record of all of its proceedings. The investments of the endowment care fund may be held in the name of the cemetery authority. [1953 c 290 § 21; 1943 c 247 § 112; Rem. Supp. 1943 § 3778-112.]

68.44.130 Bank or trust company as trustee. In lieu of the appointment of a board of trustees of its *perpetual care fund, any cemetery authority may appoint as sole trustee of its *perpetual care fund any bank or trust company qualified to engage in the trust business, and said bank or trust company shall be authorized to receive and accept said fund, including any accumulated perpetual care fund in existence at the time of its appointment. [1943 c 247 § 113; Rem. Supp. 1943 § 3778-113.]

*Reviser's note: "perpetual care fund", see note following RCW 68.36.010.

68.44.140 Compensation of trustees. No sum in excess of five percent of the income derived from the fund in any year shall be paid as compensation to the board of trustees for its services as trustee. [1943 c 247 § 114; Rem. Supp. 1943 § 3778-114.]

68.44.150 Annual report of condition of fund. The cemetery authority or the persons in whose names the funds are held shall, annually, and within ninety days after the end of the calendar or fiscal year of the cemetery authority, make and file with it a true and correct written report, verified on oath by an officer of the cemetery authority or by the oath of one or more of the

trustees, showing the actual financial condition of the funds. [1943 c 247 § 115; Rem. Supp. 1943 § 3778-115.]

68.44.160 Contributions. A cemetery authority which has established an endowment care fund may take and hold, as a part of or incident to the fund, any property, real, personal, or mixed, bequeathed, devised, granted, given, or otherwise contributed to it for its endowment care fund. [1953 c 290 § 22; 1943 c 247 § 116; Rem. Supp. 1943 § 3778-116.]

68.44.170 Use of income from fund. The income from the endowment care fund shall be used solely for the general care, maintenance, and embellishment of the cemetery, and shall be applied in such manner as the cemetery authority may from time to time determine to be for the best interest of the cemetery. [1953 c 290 § 23; 1943 c 247 § 107; Rem. Supp. 1943 § 3778-107.]

Chapter 68.46

PREARRANGEMENT CONTRACTS

Sections

68.46.010	Definitions.
68.46.020	Prearrangement trust funds—Required.
68.46.030	Prearrangement trust funds—Deposits—Retention by cemetery authority.
68.46.040	Prearrangement trust funds—Deposit with qualified public depository.
68.46.050	Withdrawals from trust funds.
68.46.060	Termination of contract by purchaser or beneficiary.
68.46.070	Involuntary termination of contract—Refund.
68.46.080	Other use of trust funds prohibited.
68.46.090	Financial reports—Filing.
68.46.100	Information to be furnished purchaser.
68.46.110	Compliance required.

68.46.010 Definitions. Unless the context clearly indicates otherwise, the words used in this chapter have the meaning given in this section:

"Prearrangement contract" means a contract for purchase of cemetery merchandise or services, to be furnished at a future date for a specific consideration which is paid in advance by one or more payments in one sum or by installment payments.

"Cemetery merchandise or services" shall mean and include monuments, markers, memorials, nameplates, liners, vaults, boxes, urns, vases, interment services, or any one or more of them.

"Prearrangement trust fund" means all funds required to be maintained in one or more funds for the benefit of beneficiaries by either this chapter or by the terms of a prearrangement contract, as herein defined.

"Depository" means a qualified public depository as defined by RCW 39.58.010, a credit union as governed by chapter 31.12 RCW, a mutual savings bank as governed by Title 32 RCW, a savings and loan association as governed by Title 33 RCW, and a federal credit union or a federal savings and loan association organized, operated, and governed by any act of congress, in which prearrangement funds are deposited by any cemetery authority. [1975 1st ex.s. c 55 § 1; 1973 1st ex.s. c 68 § 1.]

68.46.020 Prearrangement trust funds—Required. Any cemetery authority selling by prearrangement contracts any merchandise or services shall establish and maintain one or more prearrangement funds for the benefit of beneficiaries of prearrangement contracts. [1973 1st ex.s. c 68 § 2.]

68.46.030 Prearrangement trust funds—Deposits—Retention by cemetery authority. Fifty percent of all funds collected in payment of each prearrangement contract, excluding sales tax and endowment care if such charge is made, may be retained by the cemetery authority. Deposits to the prearrangement trust fund shall be made not later than the twentieth day of each month following receipt of each payment as made on the last fifty percent of each prearrangement contract, excluding sales tax and endowment care, if such charge is made. [1973 1st ex.s. c 68 § 3.]

68.46.040 Prearrangement trust funds—Deposit with qualified public depository. All prearrangement trust funds shall be deposited in a qualified public depository as defined by RCW 68.46.010. Such savings accounts shall be designated as the prearrangement trust fund of the particular cemetery authority for the benefit of the beneficiaries named in any prearrangement contract. [1973 1st ex.s. c 68 § 4.]

68.46.050 Withdrawals from trust funds. A bank, trust company, or savings and loan association designated as the depository of prearrangement funds shall permit withdrawal by a cemetery authority of all funds deposited under any specific prearrangement contract plus interest accrued thereon, under the following circumstances and conditions:

(1) If the cemetery authority files a verified statement with the depository that the prearrangement merchandise and services covered by a contract have been furnished and delivered in accordance therewith; or

(2) If the cemetery authority files a verified statement that a specific prearrangement contract has been canceled in accordance with its terms. [1973 1st ex.s. c 68 § 5.]

68.46.060 Termination of contract by purchaser or beneficiary. Any purchaser or beneficiary or beneficiaries may, upon written demand of any cemetery authority, demand that any prearrangement contract with such cemetery authority be terminated. In such event, the cemetery authority shall within thirty days refund to such purchaser or beneficiary or beneficiaries all moneys which have been deposited by such cemetery authority with any depository according to the provisions of this chapter, along with such interest as may have been earned by the deposit of such moneys. In any case, where, under a prearrangement contract there is more than one beneficiary, no written demand as provided in this section shall be honored by any cemetery authority unless the written demand provided for herein shall bear the signatures of all of such beneficiaries. [1973 1st ex.s. c 68 § 6.]

68.46.070 Involuntary termination of contract—Refund. Prearrangement contracts shall automatically terminate if the cemetery authority shall go out of business, become insolvent or bankrupt, make an assignment for the benefit of creditors, or for any other reason be unable to fulfill the obligations under the contract, in which event, and upon demand by the purchaser or beneficiary or beneficiaries of any prearrangement contract, the depository of the prearrangement funds shall refund to purchasers of prearrangement contracts all funds deposited in accordance with said contracts, unless otherwise ordered by a court of competent jurisdiction. [1973 1st ex.s. c 68 § 7.]

68.46.080 Other use of trust funds prohibited. Prearrangement trust funds shall not be used in any way, directly or indirectly, for the benefit of the cemetery authority or any director, officer, agent or employee of any cemetery authority, including, but not limited to any encumbrance, pledge, or other utilization or prearrangement trust funds as collateral or other security. [1973 1st ex.s. c 68 § 8.]

68.46.090 Financial reports—Filing. Any cemetery authority selling prearrangement merchandise or other prearrangement services shall file in its office or offices and with the cemetery board a written report upon forms prepared by the cemetery board which shall state the amount of the principle of the prearrangement trust fund or funds, the depository of such fund or funds, and cash on hand which is or may be due to such fund as well as such other information the board may deem appropriate. All information appearing on such written reports shall be revised at least annually and shall be verified by the president, and the secretary or auditor preparing the same. [1973 1st ex.s. c 68 § 9.]

68.46.100 Information to be furnished purchaser. Every prearrangement contract shall contain language which informs the purchaser of the prearrangement trust fund and the amount to be deposited in the prearrangement trust fund, which shall not be less than fifty percent of the cash purchase price of the merchandise and services in the contract and shall not include charges for endowment care when included in the purchase price. [1973 1st ex.s. c 68 § 10.]

68.46.110 Compliance required. No cemetery authority shall sell, offer to sell or authorize the sale of cemetery merchandise or services or accept funds in payment of any prearrangement contract, either directly or indirectly, unless such acts are performed in compliance with *this act, and under the authority of a valid, subsisting and unsuspended certificate of authority to operate a cemetery in this state by the Washington state cemetery board. [1973 1st ex.s. c 68 § 11.]

*Reviser's note: "this act" apparently refers to 1973 1st ex.s. c 68, codified herein as chapter 68.46 RCW and the amendments to RCW 68.05.130-68.05.160, 68.05.180 and 68.05.255 by 1973 1st ex.s. c 68.

Chapter 68.48

PENAL AND MISCELLANEOUS PROVISIONS

Sections

68.48.010	Unlawful damage to graves, markers, shrubs, etc.— Interfering with funeral.
68.48.020	Unlawful damage to graves, markers, shrubs, etc.— Civil liability for damage.
68.48.030	Unlawful damage to graves, markers, shrubs, etc.— Exceptions.
68.48.040	Nonconforming cemetery a nuisance—Penalty— Costs of prosecution.
68.48.050	Requirements as to crematories.
68.48.060	Defendant liable for costs.
68.48.070	Exclusions.
68.48.080	Police authority—Who may exercise.
68.48.090	Forfeiture of office for inattention to duty.

Burial, removal permits required: RCW 70.58.230.

Care of veterans' plot at Olympia: RCW 73.24.020.

68.48.010 Unlawful damage to graves, markers, shrubs, etc.—Interfering with funeral. Every person is guilty of a gross misdemeanor who unlawfully or without right wilfully does any of the following:

(1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down or removes, any tomb, plot, monument, memorial or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any enclosure for the protection of a cemetery or any property in a cemetery.

(2) Destroys, cuts, breaks, removes or injures any building, statuary, ornamentation, tree, shrub, flower or plant within the limits of a cemetery.

(3) Disturbs, obstructs, detains or interferes with any person carrying or accompanying human remains to a cemetery or funeral establishment, or engaged in a funeral service, or an interment. [1943 c 247 § 36; Rem. Supp. 1943 § 3778–36. Cf. 1909 c 249 § 240 and 1856–57 p 28 §§ 4, 5.]

68.48.020 Unlawful damage to graves, markers, shrubs, etc.—Civil liability for damage. Any person violating any provision of RCW 68.48.010 is liable, in a civil action by and in the name of the cemetery authority, to pay all damages occasioned by his unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed. [1943 c 247 § 37; Rem. Supp. 1943 § 3778–37.]

68.48.030 Unlawful damage to graves, markers, shrubs, etc.—Exceptions. The provisions of RCW 68.48.010 do not apply to the removal or unavoidable breakage or injury, by a cemetery authority, of any thing placed in or upon any portion of its cemetery in violation of any of the rules or regulations of the cemetery authority, nor to the removal of anything placed in the cemetery by or with the consent of the cemetery authority which has become in a wrecked, unsightly or dilapidated condition. [1943 c 247 § 37; Rem. Supp. 1943 § 3778–37.]

68.48.040 Nonconforming cemetery a nuisance—Penalty—Costs of prosecution. Every person, firm or corporation who is the owner or operator of a cemetery

established in violation of *this act is guilty of maintaining a public nuisance and upon conviction is punishable by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in a county jail for not less than one month nor more than six months, or by both; and, in addition is liable for all costs, expenses and disbursements paid or incurred in prosecuting the case. [1943 c 247 § 145; Rem. Supp. 1943 § 3778–145.]

*Reviser's note: "this act", see note following RCW 68.04.020.

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.48.050 Requirements as to crematories. No crematory shall hereafter be constructed or established unless the crematory is of fireproof construction and there is in connection therewith a fireproof columbarium, a fireproof mausoleum, a fireproof room for temporary care of cremated remains or a burial park amply equipped at all times for the interment of remains of bodies cremated at the crematory. Nothing herein contained shall prevent existing crematories from being repaired, altered, or reconstructed. Nothing in *this act shall prohibit the cremation of human remains in existing crematories, nor the temporary storage of cremated remains. [1943 c 247 § 56; Rem. Supp. 1943 § 3778–56.]

*Reviser's note: "this act", see note following RCW 68.04.020.

Effective date—1943 c 247: See note following RCW 68.20.040.

68.48.060 Defendant liable for costs. Every person who violates any provision of *this act is guilty of a misdemeanor, and in addition is liable for all costs, expenses, and disbursements paid or incurred by a person prosecuting the case. [1943 c 247 § 139; Rem. Supp. 1943 § 3778–139.]

*Reviser's note: "this act", see note following RCW 68.04.020.

Costs, etc., to be fixed by court having jurisdiction: RCW 68.28.065.

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.48.070 Exclusions. The provisions of RCW 68.20.010 through 68.20.040, 68.24.020 through 68.24.150, 68.24.180, and chapters 68.32, 68.40 and 68.44 RCW, relating to private cemeteries, do not apply to any of the following:

(1) Any religious corporation, church, religious society or denomination, a corporation sole administering temporalities of any church or religious society or denomination, or any cemetery organized, controlled, and operated by any of them;

(2) Any county, town or city cemetery. [1943 c 247 § 146; Rem. Supp. 1943 § 3778–146.]

68.48.080 Police authority—Who may exercise. The sexton, superintendent or other person in charge of a cemetery, and such other persons as the cemetery authority designates have the authority of a police officer for the purpose of maintaining order, enforcing the rules and regulations of the cemetery association, the laws of the state, and the ordinances of the city or county, within the cemetery over which he has charge, and

within such radius as may be necessary to protect the cemetery property. [1943 c 247 § 55; Rem. Supp. 1943 § 3778-55.]

68.48.090 Forfeiture of office for inattention to duty.
The office of any director or officer who acts or permits action contrary to *this act immediately thereupon becomes vacant. [1943 c 247 § 132; Rem. Supp. 1943 § 3778-132.]

***Reviser's note:** "this act", see note following RCW 68.04.020.

TITLE 69

FOOD, DRUGS, COSMETICS, AND POISONS

Chapters

- 69.04** Food, drug, and cosmetic act.
- 69.06** Food and beverage establishment workers' permits.
- 69.07** Washington food processing act.
- 69.08** Flour, white bread, and rolls.
- 69.11** Bakeries and bakery products—1903 act.
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- 69.20** Confections.
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- 69.28** Honey.
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- 69.32** Narcotics—Addiction.
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- 69.50** Uniform controlled substances act.
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Chapter 69.04

FOOD, DRUG, AND COSMETIC ACT

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Chapter 69.07 RCW does not impair authority of director or department under this chapter: RCW 69.07.160.

Crimes relating to drugs: Chapters 9.91 and 9.94 RCW.

Dairies and dairy products: Chapter 15.32 RCW.

Feeds, fertilizers and livestock remedies: Chapter 15.52 RCW.

Filled dairy products deemed adulterated for purposes of this chapter: RCW 15.38.040.

Patent medicine peddlers: Chapter 18.60 RCW.

Prescriptions by chiropractors: RCW 18.22.185.

Weights and measures, regulation: Chapter 19.92 RCW.

69.04.001 Statement of purpose. This chapter is intended to enact state legislation (1) which safeguards the public health and promotes the public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandising deceit, flowing from intrastate commerce in food, drugs, devices, and cosmetics; and (2) which is uniform, as provided in this chapter, with the federal food, drug, and cosmetic act; and with the federal trade commission act, to the extent it expressly outlaws the false advertisement of food, drugs, devices, and cosmetics; and (3) which thus promotes uniformity of such law and its administration and enforcement, in and throughout the United States. [1945 c 257 § 2; Rem. Supp. 1945 § 6163–51.]

Conformity with federal regulations: RCW 69.04.190 and 69.04.200.

69.04.002 Introductory. For the purposes of this chapter, terms shall apply as herein defined unless the context clearly indicates otherwise. [1945 c 257 § 3; Rem. Supp. 1945 § 6163–52.]

69.04.003 "Federal act" defined. The term "federal act" means the federal food, drug, and cosmetic act, approved on June 25, 1938. (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.) [1945 c 257 § 4; Rem. Supp. 1945 § 6163–53.]

69.04.004 "Intrastate commerce". The term "intrastate commerce" means any and all commerce within the state of Washington and subject to the jurisdiction thereof; and includes the operation of any business or service establishment. [1945 c 257 § 5; Rem. Supp. 1945 § 6163–54.]

69.04.005 "Sale". The term "sale" means any and every sale and includes (1) manufacture, processing, packing, canning, bottling, or any other production, preparation, or putting up; (2) exposure, offer, or any other proffer; (3) holding, storing, or any other possessing; (4) dispensing, giving, delivering, serving, or any

other supplying; and (5) applying, administering, or any other using. [1945 c 257 § 6; Rem. Supp. 1945 § 6163-55.]

69.04.006 "Director". The term "director" means the director of the department of agriculture of the state of Washington and his duly authorized representatives. [1945 c 257 § 7; Rem. Supp. 1945 § 6163-56.]

Director of agriculture, general duties: Chapter 43.23 RCW.
Supervisor of foods, feeds and drugs: RCW 43.23.080.

69.04.007 "Person". The term "person" includes individual, partnership, corporation, and association. [1945 c 257 § 8; Rem. Supp. 1945 § 6163-57.]

69.04.008 "Food". The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article. [1945 c 257 § 9; Rem. Supp. 1945 § 6163-58.]

69.04.009 "Drugs". The term "drug" means (1) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories. [1945 c 257 § 10; Rem. Supp. 1945 § 6163-59. Prior: 1907 c 211 § 2.]

69.04.010 "Device". The term "device" (except when used in RCW 69.04.016 and in RCW 69.04.040(10), 69.04.270, 69.04.690, and in RCW 69.04.470 as used in the sentence "(as compared with other words, statements, designs, or devices, in the labeling)") means instruments, apparatus, and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals. [1945 c 257 § 11; Rem. Supp. 1945 § 6163-60.]

69.04.011 "Cosmetic". The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such article; except that such term shall not include soap. [1945 c 257 § 12; Rem. Supp. 1945 § 6163-61.]

69.04.012 "Official compendium". The term "official compendium" mean the official United States pharmacopoeia, official homeopathic pharmacopoeia of the

United States, official national formulary, or any supplement to any of them. [1945 c 257 § 13; Rem. Supp. 1945 § 6163-62.]

69.04.013 "Label". The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper. [1945 c 257 § 14; Rem. Supp. 1945 § 6163-63.]

69.04.014 "Immediate container". The term "immediate container" does not include package liners. [1945 c 257 § 15; Rem. Supp. 1945 § 6163-64.]

69.04.015 "Labeling". The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article. [1945 c 257 § 16; Rem. Supp. 1945 § 6163-65.]

Crimes relating to labeling: Chapter 9.16 RCW.

69.04.016 "Misleading labeling or advertisement", how determined. If any article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual. [1945 c 257 § 17; Rem. Supp. 1945 § 6163-66.]

Crimes relating to advertising: Chapter 9.04 RCW.

69.04.017 "Antiseptic" as germicide. The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body. [1945 c 257 § 18; Rem. Supp. 1945 § 6163-67.]

69.04.018 "New drug" defined. The term "new drug" means (1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of

which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions: *Provided*, That no drug in use on the *effective date of this chapter shall be regarded as a new drug. [1945 c 257 § 19; Rem. Supp. 1945 § 6163-68.]

*Effective date—1945 c 257: See RCW 69.04.860.

69.04.019 "Advertisement". The term "advertisement" means all representations, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics. [1945 c 257 § 20; Rem. Supp. 1945 § 6163-69.]

69.04.020 "Contaminated with filth". The term "contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations. [1945 c 257 § 21; Rem. Supp. 1945 § 6163-70.]

69.04.021 "Package". The word "package" shall include, and be construed to include, wrapped meats enclosed in papers or other materials as prepared by the manufacturers thereof for sale. [1963 c 198 § 8.]

69.04.022 "Pesticide chemical". The term "pesticide chemical" means any substance defined as an economic poison and/or agricultural pesticide in Title 15 RCW as now enacted or hereafter amended. [1963 c 198 § 9.]

69.04.023 "Raw agricultural commodity". The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing. [1963 c 198 § 10.]

69.04.024 "Food additive", "safe". (1) The term "food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance generally is recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958; through either scientific procedures or experience based on common use in food) to be unsafe under the conditions of its intended use; except that such term does not include; (a) a pesticide chemical in or on a raw agricultural commodity; or (b) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or (c) a color additive.

(2) The term "safe" as used in the food additive definition has reference to the health of man or animal. [1963 c 198 § 11.]

69.04.025 "Color additive", "color". (1) The term "color additive" means a material which (a) is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source, and (b) when added or applied to a food is capable (alone or through reaction with other substance) of imparting color thereto; except that such term does not include any material which the director, by regulation, determines is used (or intended to be used) solely for a purpose or purposes other than coloring.

(2) The term "color" includes black, white, and intermediate grays.

(3) Nothing in subsection (1) hereof shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological processes of produce of the soil and thereby affecting its color, whether before or after harvest. [1963 c 198 § 12.]

69.04.040 Prohibited acts. The following acts and the causing thereof are hereby prohibited:

(1) The sale in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(2) The adulteration or misbranding of any food, drug, device, or cosmetic in intrastate commerce.

(3) The receipt in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the sale thereof in such commerce for pay or otherwise.

(4) The introduction or delivery for introduction into intrastate commerce of (a) any food in violation of RCW 69.04.350; or (b) any new drug in violation of RCW 69.04.570.

(5) The dissemination within this state, in any manner or by any means or through any medium, of any false advertisement.

(6) The refusal to permit (a) entry and the taking of a sample or specimen or the making of any investigation or examination as authorized by RCW 69.04.780; or (b) access to or copying of any record as authorized by RCW 69.04.810.

(7) The refusal to permit entry or inspection as authorized by RCW 69.04.820.

(8) The removal, mutilation, or violation of an embargo notice as authorized by RCW 69.04.110.

(9) The giving of a guaranty or undertaking in intrastate commerce, referred to in RCW 69.04.080, that is false.

(10) The forging, counterfeiting, simulating, or falsely representing, or without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under RCW 69.04.350.

(11) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of a food, drug, device, or cosmetic, or the doing of any other act with respect to a food, drug, device, or cosmetic, or the labeling or advertisement thereof, which results in a violation of this chapter.

(12) The using in intrastate commerce, in the labeling or advertisement of any drug, of any representation or suggestion that an application with respect to such drug is effective under section 505 of the federal act or under RCW 69.04.570, or that such drug complies with the provisions of either such section. [1945 c 257 § 22; Rem. Supp. 1945 § 6163-71. Prior: 1917 c 168 § 1; 1907 c 211 § 1; 1901 c 94 § 1.]

69.04.050 Remedy by injunction. (1) In addition to the remedies hereinafter provided the director is hereby authorized to apply to the superior court of Thurston county for, and such court shall have jurisdiction upon prompt hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of RCW 69.04.040; without proof that an adequate remedy at law does not exist.

(2) Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals (a) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and (b) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the court shall exclude such issue from the operation of the restraining order or injunction. [1945 c 257 § 23; Rem. Supp. 1945 § 6163-72.]

Injunctions, generally: Chapter 7.40 RCW.

69.04.060 Criminal penalty for violations. Any person who violates any provision of RCW 69.04.040 shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than two hundred dollars; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than thirty days, or a fine of not more than five hundred dollars, or both such imprisonment and fine. [1945 c 257 § 24; Rem. Supp. 1945 § 6163-73. Prior: 1907 c 211 § 12; 1901 c 94 § 11.]

69.04.070 Additional penalty. Notwithstanding the provisions of RCW 69.04.060, in case of a violation of any provision of RCW 69.04.040, with intent to defraud or mislead, the penalty shall be imprisonment for not more than ninety days, or a fine of not more than one thousand dollars, or both such imprisonment and fine. [1945 c 257 § 25; Rem. Supp. 1945 § 6163-74.]

69.04.080 Avoidance of penalty. No person shall be subject to the penalties of RCW 69.04.060:

(1) For having violated RCW 69.04.040(3), if he establishes that he received and sold such article in good faith, unless he refuses on request of the director to furnish the name and address of the person in the state of Washington from whom he received such article and copies of all available documents pertaining to his receipt thereof; or

(2) For having violated RCW 69.04.040(1), (3), or (4), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person in the state of Washington from whom he received such article in good faith, to the effect that such article complies with this chapter; or

(3) For having violated RCW 69.04.040(5), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person in the state of Washington from whom he received such advertisement in good faith, to the effect that such advertisement complies with this chapter; or

(4) For having violated RCW 69.04.040(9), if he establishes that he gave such guaranty or undertaking in good faith and in reliance on a guaranty or undertaking to him, which guaranty or undertaking was to the same effect and was signed by, and contained the name and address of, a person in the state of Washington. [1945 c 257 § 26; Rem. Supp. 1945 § 6163-75.]

69.04.090 Liability of disseminator of advertisement. No publisher, radio broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties of RCW 69.04.060 by reason of his dissemination of any false advertisement, unless he has refused on the request of the director to furnish the name and address of the manufacturer, packer, distributor, seller, or advertising agency in the state of Washington, who caused him to disseminate such false advertisement. [1945 c 257 § 27; Rem. Supp. 1945 § 6163-76.]

69.04.100 Condemnation of adulterated or misbranded article. Whenever the director shall find in intrastate commerce an article subject to this chapter which is so adulterated or misbranded that it is unfit or unsafe for human use and its immediate condemnation is required to protect the public health, such article is hereby declared to be a nuisance and the director is hereby authorized forthwith to destroy such article or to render it unsalable for human use. [1945 c 257 § 28; Rem. Supp. 1945 § 6163-77.]

69.04.110 Embargo of articles. Whenever the director shall find, or shall have probable cause to believe, that an article subject to this chapter is in intrastate commerce in violation of this chapter, and that its embargo under this section is required to protect the consuming or purchasing public from injury, or possible injury, he is hereby authorized to affix to such article a notice of its embargo and against its sale in intrastate

commerce, without permission given under this chapter. But if, after such article has been so embargoed, the director shall find that such article does not involve a violation of this chapter, such embargo shall be forthwith removed. [1975 1st ex.s. c 7 § 25; 1945 c 257 § 29; Rem. Supp. 1945 § 6163-78.]

Purpose of section: See RCW 69.04.398.

69.04.120 Procedure on embargo. When the director has embargoed an article, he shall, forthwith and without delay in no event later than ten days after the affixing of notice of its embargo, petition the superior court for an order affirming such embargo. Such court shall then have jurisdiction, for cause shown and after prompt hearing to any claimant of such article, to issue an order which directs the removal of such embargo or the destruction or the correction and release of such article. An order for destruction or correction and release shall contain such provision for the payment of pertinent court costs and fees and administrative expenses, as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provision for bond, as the court finds indicated in the circumstances. [1945 c 257 § 30; Rem. Supp. 1945 § 6163-79.]

69.04.130 Petitions may be consolidated. Two or more petitions under RCW 69.04.120, which pend at the same time and which present the same issue and claimant hereunder, shall be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1945 c 257 § 31; Rem. Supp. 1945 § 6163-80.]

69.04.140 Claimant entitled to sample. The claimant in any proceeding by petition under RCW 69.04.120 shall be entitled to receive a representative sample of the article subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon. [1945 c 257 § 32; Rem. Supp. 1945 § 6163-81.]

69.04.150 Damages not recoverable if probable cause existed. No state court shall allow the recovery of damages from administrative action for condemnation under RCW 69.04.100 or for embargo under RCW 69.04.110, if the court finds that there was probable cause for such action. [1945 c 257 § 33; Rem. Supp. 1945 § 6163-82.]

69.04.160 Prosecutions. (1) It shall be the duty of each state attorney, county attorney, or city attorney to whom the director reports any violation of this chapter, or regulations promulgated under it, to cause appropriate proceedings to be instituted in the proper courts, without delay, and to be duly prosecuted as prescribed by law.

(2) Before any violation of this chapter is reported by the director to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views to the director,

either orally or in writing, with regard to such contemplated proceeding. [1945 c 257 § 34; Rem. Supp. 1945 § 6163-83.]

69.04.170 Minor infractions. Nothing in this chapter shall be construed as requiring the director to report for the institution of proceedings under this chapter, minor violations of this chapter, whenever he believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. [1945 c 257 § 35; Rem. Supp. 1945 § 6163-84.]

69.04.180 Proceedings to be in name of state. All such proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the state of Washington. [1945 c 257 § 36; Rem. Supp. 1945 § 6163-85.]

69.04.190 Standards may be prescribed by regulations. Whenever in the judgment of the director such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standards of fill of container. In prescribing any standard of fill of container, consideration shall be given to and due allowance shall be made for product or volume shrinkage or expansion unavoidable in good commercial practice, and need for packing and protective material. In prescribing any standard of quality for any canned fruit or canned vegetable, consideration shall be given to and due allowance shall be made for the differing characteristics of the several varieties thereof. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the director shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. [1945 c 257 § 37; Rem. Supp. 1945 § 6163-86. Prior: 1917 c 168 § 2.]

69.04.200 Conformance with federal standards. The definitions and standards of identity, the standards of quality and fill of container, and the label requirements prescribed by regulations promulgated under *this section shall conform, insofar as practicable, with those prescribed by regulations promulgated under section 401 of the federal act and to the definitions and standards promulgated under the meat inspection act approved March 4, 1907, as amended. [1945 c 257 § 38; Rem. Supp. 1945 § 6163-87.]

***Reviser's note:** The language "this section" appears in 1945 c 257 § 38 but apparently refers to 1945 c 257 § 37 codified as RCW 69.04.190.

69.04.205 Bacon—Packaging at retail to reveal quality and leanness. All packaged bacon other than that packaged in cans shall be offered and exposed for sale and sold, within the state of Washington only at retail in packages which permit the buyer to readily view the

quality and degree of leanness of the product. [1971 c 49 § 1.]

69.04.206 Bacon—Rules, regulations and standards—Withholding packaging use—Hearing—Final determination—Appeal. The director of the department of agriculture is hereby authorized to promulgate rules, regulations, and standards for the implementation of RCW 69.04.205 through 69.04.207. If the director has reason to believe that any packaging method, package, or container in use or proposed for use with respect to the marketing of bacon is false or misleading in any particular, or does not meet the requirements of RCW 69.04.205, he may direct that such use be withheld unless the packaging method, package, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the packaging method, package, or container does not accept the determination of the director such person, firm, or corporation may request a hearing, but the use of the packaging method, package, or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to a court of proper jurisdiction. [1971 c 49 § 2.]

69.04.207 Bacon—Effective date. RCW 69.04.205 through 69.04.207 shall take effect on January 1, 1972. [1971 c 49 § 3.]

69.04.210 Food—Adulteration by poisonous or deleterious substance. A food shall be deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or

(2) (a) If it bears or contains any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive, or (iii) a color additive) which is unsafe within the meaning of RCW 69.04.390, or (b) if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, or (c) if it is, or it bears or contains, any food additive which is unsafe within the meaning of RCW 69.04.394: *Provided*, That where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under RCW 69.04.392 and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of RCW 69.04.390 and 69.04.394, not be deemed unsafe if such residue in or on

the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity; or

(3) If it consists in whole or in part of any diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or

(4) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or

(5) If it is in whole or in part the product of a diseased animal or of an animal which has died otherwise than by slaughter or which has been fed on the uncooked offal from a slaughterhouse; or

(6) If its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or

(7) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394. [1963 c 198 § 1; 1945 c 257 § 39; Rem. Supp. 1945 § 6163-88. Prior: 1923 c 36 § 1; 1907 c 211 § 3; 1901 c 94 § 3.]

69.04.220 Food—Adulteration by abstraction, addition, substitution, etc. A food shall be deemed to be adulterated (1) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is. [1945 c 257 § 40; Rem. Supp. 1945 § 6163-89.]

69.04.231 Food—Adulteration by color additive. A food shall be deemed to be adulterated if it is, or it bears or contains a color additive which is unsafe within the meaning of RCW 69.04.396. [1963 c 198 § 5.]

69.04.240 Confectionery—Adulteration. A food shall be deemed to be adulterated if it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent, natural gum, and pectin: *Provided*, That this section shall not apply to any confectionery by reason of its containing less than one-half of one percent by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances. [1945 c 257 § 42; Rem. Supp. 1945 § 6163-91. Prior: 1923 c 36 § 1, part; 1907 c 211 § 3, part.]

69.04.250 Food—Misbranding by false label, etc. A food shall be deemed to be misbranded (1) if its labeling is false or misleading in any particular; or (2) if

it is offered for sale under the name of another food; or (3) if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated; or (4) if its container is so made, formed or filled as to be misleading. [1945 c 257 § 43; Rem. Supp. 1945 § 6163-92. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.260 Packaged food—Misbranding. If a food is in package form, it shall be deemed to be misbranded, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations promulgated by the director. [1945 c 257 § 44; Rem. Supp. 1945 § 6163-93.]

69.04.270 Food—Misbranding by lack of prominent label. A food shall be deemed to be misbranded if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. [1945 c 257 § 45; Rem. Supp. 1945 § 6163-94.]

69.04.280 Food—Misbranding for nonconformity with standard of identity. If a food purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by RCW 69.04.190, it shall be deemed to be misbranded unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food. [1945 c 257 § 46; Rem. Supp. 1945 § 6163-95.]

69.04.290 Food—Misbranding for nonconformity with standard of quality. If a food purports to be or is represented as a food for which a standard of quality has been prescribed by regulations as provided by RCW 69.04.190, and its quality falls below such standard, it shall be deemed to be misbranded unless its label bears in such manner and form as such regulations specify, a statement that it falls below such standard. [1945 c 257 § 47; Rem. Supp. 1945 § 6163-96.]

69.04.300 Food—Misbranding for nonconformity with standard of fill. If a food purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations as provided by RCW 69.04.190, and it falls below the standard of fill of container applicable thereto, it shall be

deemed to be misbranded unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard. [1945 c 257 § 48; Rem. Supp. 1945 § 6163-97.]

69.04.310 Food—Misbranding by failure to show usual name and ingredients. If a food is not subject to the provisions of RCW 69.04.280, it shall be deemed to be misbranded unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each: *Provided*, That, to the extent that compliance with the requirements of clause (2) of this section is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the director. [1945 c 257 § 49; Rem. Supp. 1945 § 6163-98.]

69.04.315 Halibut—Misbranding by failure to show proper name. No person shall label or offer for sale any food fish product designated as halibut, with or without additional descriptive words unless such food fish product is *Hippoglossus Hippoglossus* or *Hippoglossus Stenolepis*. Any person violating the provisions of this section shall be guilty of misbranding under the provisions of this chapter. [1967 ex.s. c 79 § 1.]

69.04.320 Food—Misbranding by failure to show dietary properties. If a food purports to be or is represented for special dietary uses, it shall be deemed to be misbranded, unless its label bears such information concerning its vitamin, mineral and other dietary properties as is necessary in order to fully inform purchasers as to its value for such uses, as provided by regulations promulgated by the director, such regulations to conform insofar as practicable with regulations under section 403(j) of the federal act. [1945 c 257 § 50; Rem. Supp. 1945 § 6163-99.]

69.04.330 Food—Misbranding by failure to show artificial flavoring, coloring, etc. If a food bears or contains any artificial flavoring, artificial coloring, or chemical preservative, it shall be deemed to be misbranded unless it bears labeling stating that fact: *Provided*, That to the extent that compliance with the requirements of this section is impracticable, exemptions shall be established by regulations promulgated by the director. The provisions of this section and of RCW 69.04.280 and 69.04.310, with respect to artificial coloring, shall not apply in the case of butter, cheese, or ice cream. [1945 c 257 § 51; Rem. Supp. 1945 § 6163-100.]

69.04.333 Poultry and poultry products—Label to indicate if product frozen. It shall be unlawful for any person to sell at retail or display for sale at retail any poultry and poultry products, including turkey, which has been frozen at any time, without having the package or container in which the same is sold bear a label clearly discernible to a customer that such product has

been frozen and whether or not the same has since been thawed. No such poultry or poultry product shall be sold unless in such a package or container bearing said label. [1969 ex.s. c 194 § 1.]

Washington wholesome poultry products act: Chapter 16.74 RCW.

69.04.334 Turkeys—Label requirement as to grading. No person shall advertise for sale, sell, offer for sale or hold for sale in intrastate commerce any turkey that does not bear a label. Such label shall be properly displayed on the package if such turkey is prepackaged, or attached to the turkey if not prepackaged. Such label shall, if the turkey has been graded, state the name of the governmental agency, whether federal or state, and the grade. No turkey which has been graded may be labeled as being ungraded. Any advertisement in any media concerning the sale of turkeys shall state or set forth whether a turkey is ungraded or graded and the specific grade if graded. [1969 ex.s. c 194 § 2.]

69.04.335 RCW 69.04.333 and 69.04.334 subject to enforcement and penalty provisions of chapter. The provisions of this chapter shall be applicable to the enforcement of RCW 69.04.333 and 69.04.334 and any person violating the provisions of RCW 69.04.333 and 69.04.334 shall be subject to the applicable civil and criminal penalties for such violations as provided for in this chapter. [1969 ex.s. c 194 § 3.]

69.04.340 Natural vitamin, mineral, or dietary properties need not be shown. Nothing in this chapter shall be construed to require the labeling or advertising to indicate the natural vitamin, natural mineral, or other natural dietary properties of dairy products or other agricultural products when sold as food. [1945 c 257 § 52; Rem. Supp. 1945 § 6163–101.]

69.04.350 Permits to manufacture or process certain foods. Whenever the director finds after investigation that the distribution in intrastate commerce of any class of food may, by reason of contamination with microorganisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered intrastate commerce, he then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into intrastate commerce, any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the director as provided by such regulations. Insofar as practicable such regulations shall conform with, shall specify the conditions prescribed by, and shall remain in effect only so long as those promulgated under section

404(a) of the federal act. [1945 c 257 § 53; Rem. Supp. 1945 § 6163–102.]

69.04.360 Suspension of permit. The director is authorized to suspend immediately upon notice any permit issued under authority of *this section, if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the director shall, immediately after prompt hearing and an inspection of the factory or establishment, reinstate such permit, if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended. [1945 c 257 § 54; Rem. Supp. 1945 § 6163–103.]

*Reviser's note: The language "this section" appears in 1945 c 257 § 54 but apparently refers to 1945 c 257 § 53 codified as RCW 69.04.350.

69.04.370 Right of access for inspection. Any officer or employee duly designated by the director shall have access to any factory or establishment, the operator of which holds a permit from the director, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator. [1945 c 257 § 55; Rem. Supp. 1945 § 6163–104.]

69.04.380 Food exempt if in transit for completion purposes. Food which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 56; Rem. Supp. 1945 § 6163–105.]

69.04.390 Regulations permitting tolerance of harmful matter. Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed unsafe for purposes of the application of clause (2)(a) of RCW 69.04.210; but when such substance is so required or cannot be so avoided, the director shall promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed unsafe for purposes of the application of clause (2)(a) of RCW 69.04.210. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within

the meaning of clause (1) of RCW 69.04.210. In determining the quantity of such added substance to be tolerated in or on different articles of food, the director shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. [1963 c 198 § 2; 1945 c 257 § 57; Rem. Supp. 1945 § 6163-106.]

69.04.392 Regulations permitting tolerance of harmful matter—Pesticide chemicals in or on raw agricultural commodities. (1) Any poisonous or deleterious pesticide chemical, or any pesticide chemical which generally is recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as unsafe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purpose of the application of clause (2) of RCW 69.04.210 unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed pursuant to subsection (2) hereof and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed; or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from the requirement of a tolerance pursuant to subsection (2) hereof.

While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 408 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, setting forth the tolerances for pesticide chemicals in or on any raw agricultural commodity, are hereby adopted as the regulations for tolerances applicable to this chapter: *Provided*, That the director is hereby authorized to adopt by regulation any new or future amendments to such federal regulations for tolerances, including exemption from tolerance and zero tolerances, to the extent necessary to protect the public health. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe therein tolerances for pesticides, exemptions, and zero tolerances, upon his own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to

deny the request of the petitioner for the issuance of such regulation.

(3) In adopting any new or amended tolerances by regulation issued pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the necessity for the production of an adequate, wholesome, and economical food supply; (c) the other ways in which the consumer may be affected by the same pesticide chemical or by other related substances that are poisonous or deleterious; and (d) the opinion of experts qualified by scientific training and experience to determine the proper tolerance to be allowed for any pesticide chemical. [1975 1st ex.s. c 7 § 26; 1963 c 198 § 3.]

Purpose of section: See RCW 69.04.398.

69.04.394 Regulations permitting tolerance of harmful matter—Food additives. (1) A food additive shall, with respect to any particular use or intended use of such additives, be deemed unsafe for the purpose of the application of clause (2)(c) of RCW 69.04.210, unless:

(a) It and its use or intended use conform to the terms of an exemption granted, pursuant to a regulation under subsection (2) hereof providing for the exemption from the requirements of this section for any food additive, and any food bearing or containing such additive, intended solely for investigational use by qualified experts when in the director's opinion such exemption is consistent with the public health; or

(b) There is in effect, and it and its use or intended use are in conformity with a regulation issued or effective under subsection (2) hereof prescribing the conditions under which such additive may be safely used.

While such a regulation relating to a food additive is in effect, a food shall not, by reason of bearing or containing such an additive in accordance with the regulation, be considered adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 409 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, prescribing the conditions under which such food additive may be safely used, are hereby adopted as the regulations applicable to this chapter: *Provided*, That the director is hereby authorized to adopt by regulation any new or future amendments to the federal regulations. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe the conditions under which a food additive may be safely used and exemptions where such food additive is to be used solely for investigational purposes; either upon his own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such a regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request

shall be sufficient grounds to deny the request of the petitioner for the issuance of such a regulation.

(3) In adopting any new or amended regulations pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the probable consumption of the additive and of any substance formed in or on food because of the use of the additive; (c) the cumulative effect of such additive in the diet of man or animals, taking into account any chemically or pharmacologically related substance or substances in such diet; and (d) safety factors which in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives are generally recognized as appropriate for the use of animal experimentation data. [1975 1st ex.s. c 7 § 27; 1963 c 198 § 4.]

Purpose of section: See RCW 69.04.398.

69.04.396 Regulations permitting tolerance of harmful matter—Color additives. (1) A color additive shall, with respect to any particular use (for which it is being used or intended to be used or is represented as suitable) in or on food, be deemed unsafe for the purpose of the application of RCW 69.04.231, unless:

(a) There is in effect, and such color additive and such use are in conformity with, a regulation issued under this section listing such additive for such use, including any provision of such regulation prescribing the conditions under which such additive may be safely used;

(b) Such additive and such use thereof conform to the terms of an exemption for experimental use which is in effect pursuant to regulation under this section.

While there are in effect regulations under this section relating to a color additive or an exemption with respect to such additive a food shall not, by reason of bearing or containing such additive in all respects in accordance with such regulations or such exemption, be considered adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 706 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, prescribing the use or limited use of such color additive, are hereby adopted as the regulations applicable to this chapter: *Provided*, That the director is hereby authorized to adopt by regulation any new or future amendments to the federal regulations. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe therein the conditions under which a color additive may be safely used including exemptions for experimental purposes. Such a regulation may be issued either upon the director's own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such a regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data

to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such a regulation.

(3) In adopting any new or amended regulations pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the probable consumption of, or other relevant exposure from, the additive and of any substance formed in or on food because of the use of the additive; (c) the cumulative effect, if any, of such additive in the diet of man or animals, taking into account the same or any chemically or pharmacologically related substance or substances in such diet; (d) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of color additives for the use or uses for which the additive is proposed to be listed, are generally recognized as appropriate for the use of animal experimentation data; (e) the availability of any needed practicable methods of analysis for determining the identity and quantity of (i) the pure dye and all intermediates and other impurities contained in such color additives, (ii) such additive in or on any article of food, and (iii) any substance formed in or on such article because of the use of such additive; and (f) the conformity by the manufacturer with the established standards in the industry relating to the proper formation of such color additive so as to result in a finished product safe for use as a color additive. [1975 1st ex.s. c 7 § 28; 1963 c 198 § 6.]

Purpose of section: See RCW 69.04.398.

Food—Adulteration by color additive: RCW 69.04.231.

69.04.398 Purpose of RCW 69.04.110, 69.04.392, 69.04.394, 69.04.396—Uniformity with federal laws and regulations. The purpose of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 is to promote uniformity of state legislation and regulations with the Federal Food, Drug and Cosmetic Act 21 USC 301 et seq. and regulations adopted thereunder. In accord with such declared purpose any regulation adopted under said federal food, drug and cosmetic act concerning food in effect on July 1, 1975, and not adopted under any other specific provision of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 are hereby deemed to have been adopted under the provision hereof. Further, to promote such uniformity any regulation adopted hereafter under the provisions of the federal food, drug and cosmetic act concerning food and published in the federal register shall be deemed to have been adopted under the provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 in accord with chapter 34.04 RCW as enacted or hereafter amended. The director may, however, within thirty days of the publication of the adoption of any such regulation under the federal food, drug and cosmetic act give public notice that a hearing will be held to determine if such regulation shall not be applicable under the provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396. Such hearing shall be in accord with the requirements of chapter 34.04 RCW as enacted or hereafter amended. [1975 1st ex.s. c 7 § 36.]

69.04.400 Conformance with federal regulations. The regulations promulgated under RCW 69.04.390 shall conform, insofar as practicable, with those promulgated under section 406 of the federal act. [1963 c 198 § 7; 1945 c 257 § 58; Rem. Supp. 1945 § 6163-107.]

69.04.410 Drugs—Adulteration by harmful substances. A drug or device shall be deemed to be adulterated (1) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or (2) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or (3) if it is a drug and its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal tar color other than one that is harmless and suitable for use in drugs for such purposes, as provided by regulations promulgated under section 504 of the federal act. [1945 c 257 § 59; Rem. Supp. 1945 § 6163-108. Prior: 1923 c 36 § 1; 1907 c 211 § 3; 1901 c 94 § 3.]

69.04.420 Drugs—Adulteration for failure to comply with compendium standard. If a drug or device purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium, it shall be deemed to be adulterated. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or prescribed by regulations promulgated under section 501(b) of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this section because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States and not to those of the United States pharmacopoeia. [1945 c 257 § 60; Rem. Supp. 1945 § 6163-109.]

69.04.430 Drugs—Adulteration for lack of represented purity or quality. If a drug or device is not subject to the provisions of RCW 69.04.420 and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess, it shall be deemed to be adulterated. [1945 c 257 § 61; Rem. Supp. 1945 § 6163-110.]

69.04.440 Drugs—Adulteration by admixture or substitution of ingredients. A drug shall be deemed to be adulterated if any substance has been (1) mixed or packed therewith so as to reduce its quality or strength

or (2) substituted wholly or in part therefor. [1945 c 257 § 62; Rem. Supp. 1945 § 6163-111.]

69.04.450 Drugs—Misbranding by false labeling. A drug or device shall be deemed to be misbranded if its labeling is false or misleading in any particular. [1945 c 257 § 63; Rem. Supp. 1945 § 6163-112. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.460 Packaged drugs—Misbranding. If a drug or device is in package form, it shall be deemed to be misbranded unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations promulgated by the director. [1945 c 257 § 64; Rem. Supp. 1945 § 6163-113. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.470 Drugs—Misbranding by lack of prominent label. A drug or device shall be deemed to be misbranded if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. [1945 c 257 § 65; Rem. Supp. 1945 § 6163-114. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.480 Drugs—Misbranding for failure to state content of habit forming drug. A drug or device shall be deemed to be misbranded if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha eucaine, barbituric acid, beta eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphomethane; or any chemical derivative of such substance, which derivative has been designated as habit forming by regulations promulgated under section 502(d) of the federal act; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming." [1945 c 257 § 66; Rem. Supp. 1945 § 6163-115. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.490 Drugs—Misbranding by failure to show usual name and ingredients. If a drug is not designated solely by a name recognized in an official compendium it shall be deemed to be misbranded unless its label bears (1) the common or usual name of the drug, if such there be; and (2), in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides,

ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: *Provided*, That to the extent that compliance with the requirements of clause (2) of this section is impracticable, exemptions shall be established by regulations promulgated by the director. [1945 c 257 § 67; Rem. Supp. 1945 § 6163-116. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.500 Drugs—Misbranding by failure to give directions for use and warnings. A drug or device shall be deemed to be misbranded unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: *Provided*, That where any requirement of clause (1) of this section as applied to any drug or device, is not necessary for the protection of the public health, the director shall promulgate regulations exempting such drug or device from such requirements. Such regulations shall include the exemptions prescribed under section 502(f)(1) of the federal act, insofar as such exemptions are applicable hereunder. [1945 c 257 § 68; Rem. Supp. 1945 § 6163-117. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.510 Drugs—Misbranding for improper packaging and labeling. A drug or device shall be deemed to be misbranded if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: *Provided*, That the method of packing may be modified with the consent of the director, as permitted under section 502(g) of the federal act. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States, and not to those of the United States pharmacopoeia. [1945 c 257 § 69; Rem. Supp. 1945 § 6163-118. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.520 Drugs—Misbranding for failure to show possibility of deterioration. If a drug or device has been found by the secretary of agriculture of the United States to be a drug liable to deterioration, it shall be deemed to be misbranded unless it is packaged in such form and manner, and its label bears a statement of such precautions, as required in an official compendium or by regulations promulgated under section 502(h) of the federal act for the protection of the public health. [1945 c 257 § 70; Rem. Supp. 1945 § 6163-119. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.530 Drugs—Misbranding by misleading representation. A drug shall be deemed to be misbranded if (1) its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug; or (4) if it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof. [1945 c 257 § 71; Rem. Supp. 1945 § 6163-120. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.540 Drugs—Misbranding by sale without prescription of drug requiring it. A drug or device shall be deemed to be misbranded if it is a drug which by label provides, or which the federal act or any applicable law requires by label to provide, in effect, that it shall be used only upon the prescription of a physician, dentist, or veterinarian, unless it is dispensed at retail on a written prescription signed by a physician, dentist, or veterinarian, who is licensed by law to administer such a drug. [1945 c 257 § 72; Rem. Supp. 1945 § 6163-121. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.550 Drugs exempt if in transit for completion purposes. A drug or device which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling and packaging requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 73; Rem. Supp. 1945 § 6163-122.]

69.04.560 Dispensing of certain drugs exempt. A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail) shall, if (1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian, be exempt from the requirements of RCW 69.04.450 through 69.04.540. [1945 c 257 § 74; Rem. Supp. 1945 § 6163-123.]

69.04.570 Introduction of new drug. No person shall introduce or deliver for introduction into intrastate commerce any new drug which is subject to section 505 of the federal act unless an application with respect to such drug has become effective thereunder. No person shall introduce or deliver for introduction into intrastate commerce any new drug which is not subject to section 505 of the federal act, unless (1) it has been found, by appropriate tests, that such drug is not unsafe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; and (2) an application has

been filed under this section of this chapter with respect to such drug: *Provided*, That the requirement of clause (2) shall not apply to any drug introduced into intrastate commerce at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act: *Provided further*, That if the director finds that the requirement of clause (2) as applied to any drug or class of drugs, is not necessary for the protection of the public health, he shall promulgate regulations of exemption accordingly. [1945 c 257 § 75; Rem. Supp. 1945 § 6163-124.]

69.04.580 Application for introduction. An application under RCW 69.04.570 shall be filed with the director, and subject to any waiver by the director, shall include (1) full reports of investigations which have been made to show whether or not the drug, subject to the application, is safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; (2) a full list of the articles used as components of such drug; (3) a full statement of the composition of such drug; (4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (5) such samples of such drug and of the articles used as components thereof as the director may require; and (6) specimens of the labeling proposed to be used for such drug. [1945 c 257 § 76; Rem. Supp. 1945 § 6163-125.]

69.04.590 Effective date of application. An application filed under RCW 69.04.570 shall become effective on the sixtieth day after the filing thereof, unless the director (1) makes such application effective prior to such day; or (2) issues an order with respect to such application pursuant to RCW 69.04.600. [1945 c 257 § 77; Rem. Supp. 1945 § 6163-126.]

69.04.600 Denial of application. If the director finds, upon the basis of the information before him and after due notice and opportunity for hearing to the applicant, that the drug, subject to the application, is not safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, he shall, prior to such effective date, issue an order refusing to permit such application to become effective and stating the findings upon which it is based. [1945 c 257 § 78; Rem. Supp. 1945 § 6163-127.]

69.04.610 Revocation of denial. An order refusing to permit an application under RCW 69.04.570 to become effective may be suspended or revoked by the director, for cause and by order stating the findings upon which it is based. [1945 c 257 § 79; Rem. Supp. 1945 § 6163-128.]

69.04.620 Service of order of denial. Orders of the director issued under RCW 69.04.600 shall be served (1) in person by a duly authorized representative of the director or (2) by mailing the order by registered mail addressed to the applicant or respondent at his address last known to the director. [1945 c 257 § 80; Rem. Supp. 1945 § 6163-129.]

69.04.630 Drug for investigational use exempt. A drug shall be exempt from the operation of RCW 69.04.570 which is intended, and introduced or delivered for introduction into intrastate commerce, solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs and which is plainly labeled "For investigational use only." [1945 c 257 § 81; Rem. Supp. 1945 § 6163-130.]

69.04.640 Court review of denial. The superior court of Thurston county shall have jurisdiction to review and to affirm, modify, or set aside any order issued under RCW 69.04.600, upon petition seasonably made by the person to whom the order is addressed and after prompt hearing upon due notice to both parties. [1945 c 257 § 82; Rem. Supp. 1945 § 6163-131.]

69.04.650 Dispensing of certain drugs exempt. A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail) shall, if (1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian, be exempt from the operation of RCW 69.04.570 through 69.04.640. [1945 c 257 § 83; Rem. Supp. 1945 § 6163-132.]

69.04.660 Federally licensed drugs exempt. The provisions of RCW 69.04.570 shall not apply to any drug which is licensed under the federal virus, serum, and toxin act of July 1, 1902; or under the federal virus, serums, toxins, antitoxins, and analogous products act of March 4, 1913. [1945 c 257 § 84; Rem. Supp. 1945 § 6163-133.]

69.04.670 Cosmetics—Adulteration by injurious substances. A cosmetic shall be deemed to be adulterated (1) if it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual: *Provided*, That this provision shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying direction should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.", and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph (5) the term "hair dye" shall not include eyelash dyes or eyebrow dyes; or (2) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or (3) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

or (4) if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or (5) if it is not a hair dye and it bears or contains a coal tar color other than one that is harmless and suitable for use in cosmetics, as provided by regulations promulgated under section 604 of the federal act. [1945 c 257 § 85; Rem. Supp. 1945 § 6163–134.]

69.04.680 Cosmetics—Misbranding by false label, etc. A cosmetic shall be deemed to be misbranded (1) if its labeling is false or misleading in any particular; or (2) if in package form, unless it bears a label containing (a) the name and place of business of the manufacturer, packer, or distributor; and (b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (b) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the director. [1945 c 257 § 86; Rem. Supp. 1945 § 6163–135.]

69.04.690 Cosmetics—Misbranding by lack of prominent label. A cosmetic shall be deemed to be misbranded (1) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or (2) if its container is so made, formed, or filled as to be misleading. [1945 c 257 § 87; Rem. Supp. 1945 § 6163–136.]

69.04.700 Cosmetics exempt if in transit for completion purposes. A cosmetic which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 88; Rem. Supp. 1945 § 6163–137.]

69.04.710 Advertisement, when deemed false. An advertisement of a food, drug, device, or cosmetic shall be deemed to be false, if it is false or misleading in any particular. [1945 c 257 § 89; Rem. Supp. 1945 § 6163–138.]

69.04.720 Advertising of cure of certain diseases deemed false. The advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and

vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, venereal disease, shall also be deemed to be false; except that no advertisement not in violation of RCW 69.04.710 shall be deemed to be false under this section if it is disseminated only to members of the medical, veterinary, dental, pharmacal, and other legally recognized professions dealing with the healing arts, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: *Provided*, That whenever the director determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the director shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the director may deem necessary in the interest of public health: *Provided further*, That this section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious. [1945 c 257 § 90; Rem. Supp. 1945 § 6163–139.]

69.04.730 Enforcement, where vested—Regulations. The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the director: *Provided, however*, That the director shall designate the Washington state board of pharmacy to carry out all the provisions of this chapter pertaining to drugs and cosmetics, with authority to promulgate regulations for the efficient enforcement thereof. [1945 c 257 § 91 (vetoed); 1947 c 25 (passed notwithstanding veto); Rem. Supp. 1947 § 6163–139a.]

69.04.740 Regulations to conform with federal regulations. The purpose of this chapter being to promote uniformity of state legislation with the federal act, the director is hereby authorized (1) to adopt, insofar as applicable, the regulations from time to time promulgated under the federal act; and (2) to make the regulations promulgated under this chapter conform, insofar as practicable, with those promulgated under the federal act. [1945 c 257 § 92; Rem. Supp. 1945 § 6163–140.]

69.04.750 Hearings. Hearings authorized or required by this chapter shall be conducted by the director or his duly authorized representative designated for the purpose. [1945 c 257 § 93; Rem. Supp. 1945 § 6163–141.]

69.04.761 Hearing on proposed regulation—Procedure. The director shall hold a public hearing upon a proposal to promulgate any new or amended regulation under this chapter. The procedure to be followed concerning such hearings shall comply in all respects with chapter 34.04 RCW (Administrative Procedure Act) as now enacted or hereafter amended. [1963 c 198 § 13.]

69.04.770 Review on petition prior to effective date. The director shall have jurisdiction to review and to affirm, modify, or set aside any order issued under RCW 69.04.760, promulgating a new or amended regulation under this chapter, upon petition made at any time prior to the effective date of such regulation, by any person adversely affected by such order. [1945 c 257 § 95; Rem. Supp. 1945 § 6163-143.]

69.04.780 Investigations—Samples—Right of entry. The director shall cause the investigation and examination of food, drugs, devices, and cosmetics subject to this chapter. The director shall have the right (1) to take a sample or specimen of any such article, for examination under this chapter, upon tendering the market price therefor to the person having such article in custody; and (2) to enter any place or establishment within this state, at reasonable times, for the purpose of taking a sample or specimen of any such article, for such examination. [1945 c 257 § 96; Rem. Supp. 1945 § 6163-144.]

69.04.790 Owner may obtain part of sample. Where a sample or specimen of any such article is taken for examination under this chapter the director shall, upon request, provide a part thereof for examination by any person named on the label of such article, or the owner thereof, or his attorney or agent; except that the director is authorized, by regulation, to make such reasonable exceptions from, and to impose such reasonable terms and conditions relating to, the operation of this section as he finds necessary for the proper administration of the provisions of this chapter. [1945 c 257 § 97; Rem. Supp. 1945 § 6163-145.]

69.04.800 Access to records of other agencies. For the purpose of enforcing the provisions of this chapter, pertinent records of any administrative agency of the state government shall be open to inspection by the director. [1945 c 257 § 98; Rem. Supp. 1945 § 6163-146.]

69.04.810 Access to records of intrastate carriers. For the purpose of enforcing the provisions of this chapter, carriers engaged in intrastate commerce, and persons receiving food, drugs, devices, or cosmetics in intrastate commerce or holding such articles so received, shall, upon the request of the director, permit the director at reasonable times, to have access to and to copy all records showing the movement in intrastate commerce of any food, drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and the copying of any such records so requested when such request is accompanied by a statement in writing specifying the nature or kind of food, drug, device, or cosmetic to which such request relates: *Provided*, That evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained: *Provided further*, That carriers shall not

be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business as carriers. [1945 c 257 § 99; Rem. Supp. 1945 § 6163-147.]

69.04.820 Right of entry to factories, warehouses, vehicles, etc. For the purpose of enforcing the provisions of this chapter, the director is authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment subject to this chapter, or to enter any vehicle being used to transport or hold food, drugs, devices, or cosmetics in intrastate commerce; and (2) to inspect, at reasonable times, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, labeling, and advertisements therein. [1945 c 257 § 100; Rem. Supp. 1945 § 6163-148.]

69.04.830 Publication of reports of judgments, orders and decrees. The director may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof. [1945 c 257 § 101; Rem. Supp. 1945 § 6163-149.]

69.04.840 Dissemination of information. The director may cause to be disseminated information regarding food, drugs, devices, or cosmetics in situations involving, in the opinion of the director, imminent danger to health or gross deception of, or fraud upon, the consumer. Nothing in this section shall be construed to prohibit the director from collecting, reporting, and illustrating the results of his examinations and investigations under this chapter. [1945 c 257 § 102; Rem. Supp. 1945 § 6163-150.]

69.04.845 Severability—1945 c 257. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. [1945 c 257 § 103; Rem. Supp. 1945 § 6163-151.]

69.04.850 Construction—1945 c 257. This chapter and the regulations promulgated hereunder shall be so interpreted and construed as to effectuate its general purpose to secure uniformity with federal acts and regulations relating to adulterating, misbranding and false advertising of food, drugs, devices, and cosmetics. [1945 c 257 § 104; Rem. Supp. 1945 § 6163-152.]

69.04.860 Effective date of chapter. This chapter shall take effect ninety days after the date of its enactment, and all state laws or parts of laws in conflict with this chapter are then repealed: *Provided*, That the provisions of section 91 shall become effective on the enactment of this chapter, and thereafter the director is hereby authorized to conduct hearings and to promulgate regulations which shall become effective on or after

the effective date of this chapter as the director shall direct: *Provided further*, That all other provisions of this chapter to the extent that they may relate to the enforcement of such sections, shall take effect on the date of the enactment of this chapter. [1945 c 257 § 105; Rem. Supp. 1945 § 6163-153.]

Reviser's note: 1945 c 257 § 91 referred to herein was vetoed by the governor but subsequently reenacted as 1947 c 25 notwithstanding the veto. Section 91 is codified as RCW 69.04.730. For effective date of section 91 see preface 1947 session laws.

69.04.870 Short title. This chapter may be cited as the Uniform Washington Food, Drug, and Cosmetic Act. [1945 c 257 § 1; Rem. Supp. 1945 § 6163-50.]

69.04.900 Perishable packaged food—Pull date labeling—Definitions. For the purpose of RCW 69.04.900 through 69.04.920:

(1) "Perishable packaged food goods" means and includes all foods and beverages, except alcoholic beverages, frozen foods, fresh meat, poultry and fish and a raw agricultural commodity as defined in this chapter, intended for human consumption which are canned, bottled, or packaged other than at the time and point of retail sale, which have a high risk of spoilage within a period of thirty days, and as determined by the director of the department of agriculture by rule and regulation to be perishable.

(2) "Pull date" means the latest date a packaged food product shall be offered for sale to the public.

(3) "Shelf life" means the length of time during which a packaged food product will retain its safe consumption quality if stored under proper temperature conditions.

(4) "Fish" as used in subsection (1) of this section shall mean any water breathing animals, including, but not limited to, shellfish such as lobster, clams, crab, or other mollusca which are prepared, processed, sold, or intended or offered for sale. [1974 ex.s. c 57 § 1; 1973 1st ex.s. c 112 § 1.]

69.04.905 Perishable packaged food—Pull date labeling—Required. All perishable packaged food goods with a projected shelf life of thirty days or less, which are offered for sale to the public after January 1, 1974 shall state on the package the pull date. The pull date must be stated in day, and month and be in a style and format that is readily decipherable by consumers: *Provided*, That the director of the department of agriculture may exclude the monthly requirement on the pull date for perishable packaged food goods which have a shelf life of seven days or less. No perishable packaged food goods shall be offered for sale after the pull date, except as provided in RCW 69.04.910. [1974 ex.s. c 57 § 2; 1973 1st ex.s. c 112 § 2.]

69.04.910 Perishable packaged food—Pull date labeling—Selling or trading goods beyond pull date—Repackaging to substitute for original date—Exception. No person shall sell, trade or barter any perishable packaged food goods beyond the pull date appearing thereon, nor shall any person rewrap or repackage any packaged perishable food goods with the intention of placing a pull date thereon which is different

from the original: *Provided, however*, That those packaged perishable food goods whose pull dates have expired may be sold if they are still wholesome and are without danger to health, and are clearly identified as having passed the pull date. [1973 1st ex.s. c 112 § 3.]

69.04.915 Perishable packaged food—Pull date labeling—Storage—Rules and regulations. The director of the department of agriculture shall by rule and regulation establish uniform standards for pull date labeling, and optimum storage conditions of perishable packaged food goods. In addition to his other duties the director, in consultation with the director of the department of social and health services where appropriate, may promulgate such other rules and regulations as may be necessary to carry out the purposes of RCW 69.04.900 through 69.04.920. [1973 1st ex.s. c 112 § 4.]

69.04.920 Perishable packaged food—Pull date labeling—Penalties. Any person convicted of a violation of RCW 69.04.905 or 69.04.910 shall be punishable by a fine not to exceed five hundred dollars. [1973 1st ex.s. c 112 § 5.]

69.04.930 Frozen fish and meat—Labeling requirements—Exceptions. It shall be unlawful for any person to sell at retail or display for sale at retail any food fish or shellfish as defined in RCW 75.04.040 as now or hereafter amended, any meat capable of use as human food as defined in RCW 16.49A.150 as now or hereafter amended, or any meat food product as defined in RCW 16.49A.130 as now or hereafter amended which has been frozen subsequent to being offered for sale or distribution to the ultimate consumer, without having the package or container in which the same is sold bear a label clearly discernible to a customer that such product has been frozen and whether or not the same has since been thawed. No such food fish or shellfish, meat or meat food product shall be sold unless in such a package or container bearing said label: *Provided*, That this section shall not include any of the aforementioned food or food products that have been frozen prior to being smoked, cured, cooked or subjected to the heat of commercial sterilization. [1975 c 39 § 1.]

Chapter 69.06 FOOD AND BEVERAGE ESTABLISHMENT WORKERS' PERMITS

Sections	
69.06.010	Food and beverage service worker's permit—Filing, duration.
69.06.020	Permit exclusive and valid throughout state—Cost.
69.06.030	Diseased persons—May not work—Employer may not hire.
69.06.040	Chapter applies only to certain retail establishments.
69.06.050	Permit to be secured within thirty days from time of employment.
69.06.060	Penalty.

69.06.010 Food and beverage service worker's permit—Filing, duration. It shall be unlawful for any person to be employed in the handling of unwrapped or unpackaged food unless he or she shall furnish and place

on file with the person in charge of such establishment, a food and beverage service worker's permit, as prescribed by the state board of health. Such permit shall be kept on file by the employer and open for inspection at all reasonable hours by authorized public health officials. Such permit shall be returned to the employee upon termination of employment. Permits shall be valid for two years from date of issuance, and each employee shall furnish the person in charge of said food handling establishments such permit biennially. [1957 c 197 § 1.]

69.06.020 Permit exclusive and valid throughout state—Cost. The permit provided in RCW 69.06.010 shall be valid in every city, town and county in the state, for the period for which it is issued, and no other health certificate shall be required of such employees by any municipal corporation or political subdivision of the state. The cost of the permit shall be uniform throughout the state and shall be in that amount set by the state board of health, not to exceed two dollars. [1957 c 197 § 2.]

69.06.030 Diseased persons—May not work—Employer may not hire. It shall be unlawful for any person afflicted with any contagious or infectious disease to work in or about any place where unwrapped or unpackaged food and/or beverage products are prepared or sold, or offered for sale for human consumption and it shall be unlawful for any person knowingly to employ a person so afflicted. [1957 c 197 § 3.]

69.06.040 Chapter applies only to certain retail establishments. This chapter shall apply only to retail establishments regularly engaged in the business of food handling or food service. [1957 c 197 § 4.]

69.06.050 Permit to be secured within thirty days from time of employment. Individuals under this chapter shall have thirty days from commencement of employment to secure health permits. [1957 c 197 § 5.]

69.06.060 Penalty. Any violation of the provisions of this chapter shall be a misdemeanor. [1957 c 197 § 6.]

Chapter 69.07

WASHINGTON FOOD PROCESSING ACT

Sections

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69.07.140	Violations—Warning notice.
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69.07.160	Authority of director and department under chapter 69.04 RCW not impaired by any provision of chapter 69.07 RCW.
69.07.900	Chapter is cumulative and nonexclusive.
69.07.910	Severability—1967 ex.s. c 121.
69.07.920	Short title.

69.07.010 Definitions. For the purposes of this chapter:

(1) "Department" means the department of agriculture of the state of Washington;

(2) "Director" means the director of the department;

(3) "Food" means any substance used for food or drink by man and any ingredient used for components of any such substance regardless of the quantity of such component;

(4) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media;

(5) "Food processing" means the handling or processing of any food in any manner in preparation for sale for human consumption: *Provided*, That it shall not include fresh fruit or vegetables merely washed or trimmed while being prepared or packaged for sale in their natural state;

(6) "Food processing plant" includes but is not limited to any premises, plant, establishment, facilities and the appurtenances thereto, in whole or in part, where food is prepared, handled or processed in any manner for resale or distribution to retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer: *Provided*, That retail outlets, as set forth herein, processing foods in any manner for resale shall be considered a food processing plant as to such processing;

(7) "Food service establishment" shall mean any fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, night club, roadside stand, industrial-feeding establishment, retail grocery, retail food market, retail meat market, retail bakery, private, public, or nonprofit organization routinely serving food, catering kitchen, commissary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

For the purpose of this chapter any custom cannery or processing plant where raw food products, food, or food products are processed for the owner thereof, or the food processing facilities are made available to the owners or persons in control of raw food products or food or food products for processing in any manner, shall be considered to be food processing plants. [1967 ex.s. c 121 § 1.]

69.07.020 Enforcement—Rules—Adoption—Contents—Standards. (1) The department shall enforce and carry out the provisions of this chapter, and may adopt the necessary rules to carry out its purposes.

(2) Such rules may include:

(a) Standards for temperature controls in the storage of foods, so as to provide proper refrigeration.

(b) Standards for temperatures at which low acid foods must be processed and the length of time such temperatures must be applied and at what pressure in the processing of such low acid foods.

(c) Standards and types of recording devices that must be used in providing records of the processing of low acid foods, and how they shall be made available to the department of agriculture for inspection.

(d) Requirements for the keeping of records of the temperatures, times and pressures at which foods were processed, or for the temperatures at which refrigerated products were stored by the licensee and the furnishing of such records to the department.

(e) Standards that must be used to establish the temperature and purity of water used in the processing of foods. [1969 c 68 § 1; 1967 ex.s. c 121 § 2.]

69.07.040 Food processing license—Expiration date—Application, contents—Fee. It shall be unlawful for any person to operate a food processing plant or process foods without first having obtained an annual license from the department, which shall expire on the 31st day of March following issuance. A separate license shall be required for each food processing plant. Application for a license shall be on a form prescribed by the director and accompanied by a ten dollar annual license fee. Such application shall include the full name of the applicant for the license and the location of the food processing plant he intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership, or names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the director. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof. [1969 c 68 § 2; 1967 ex.s. c 121 § 4.]

69.07.050 Renewal of license—Additional fee, when. If the application for renewal of any license provided for under this chapter is not filed prior to April 1st in any year, an additional fee of five dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such additional fee shall not be charged if the applicant furnishes an affidavit certifying that he has not operated a food processing plant or processed foods subsequent to the expiration of his license. [1967 ex.s. c 121 § 5.]

69.07.060 Denial, suspension or revocation of license—Grounds. The director may, subsequent to a

hearing thereon, deny, suspend or revoke any license provided for in this chapter if he determines that an applicant has committed any of the following acts:

(1) Refused, neglected or failed to comply with the provisions of this chapter, the rules and regulations adopted hereunder, or any lawful order of the director.

(2) Refused, neglected or failed to keep and maintain records required by this chapter, or to make such records available when requested pursuant to the provisions of this chapter.

(3) Refused the department access to any portion or area of the food processing plant for the purpose of carrying out the provisions of this chapter.

(4) Refused the department access to any records required to be kept under the provisions of this chapter. [1967 ex.s. c 121 § 6.]

69.07.070 Rules and regulations, hearings subject to Administrative Procedure Act. The adoption of any rules and regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued under the provisions of this chapter shall be subject to the applicable provisions of chapter 34.04 RCW, the Administrative Procedure Act, as enacted or hereafter amended. [1967 ex.s. c 121 § 7.]

69.07.080 Inspections by department—Access—When. For purpose of determining whether the rules adopted pursuant to RCW 69.07.020, as now or hereafter amended are complied with, the department shall have access for inspection purposes to any part, portion or area of a food processing plant, and any records required to be kept under the provisions of this chapter or rules and regulations adopted hereunder. Such inspection shall, when possible, be made during regular business hours or during any working shift of said food processing plant. The department may, however, inspect such food processing plant at any time when it has received information that an emergency affecting the public health has arisen and such food processing plant is or may be involved in the matters causing such emergency. [1969 c 68 § 3; 1967 ex.s. c 121 § 8.]

69.07.090 Requirements for plants already in operation—Extension of time for compliance, when. Any food processing plant in actual operation at the time of July 30, 1967 or any seasonal food processing plant which has operated during any portion of the twelve months immediately preceding July 30, 1967, shall be granted a license, upon application and payment of the proper license fee, subject to meeting those immediate and absolute minimum requirements in this chapter or rules or regulations promulgated thereunder for the protection of the public health. The department may, however, grant such food processing plant such additional time as may be reasonably necessary, to allow for major renovations, improvements, or additions to said food processing plant, as required to meet the provisions of this chapter or rules and regulations adopted hereunder: *Provided*, That such extension of time shall not apply to the mandatory use of indicating and recording thermometers on retorts or other facilities or equipment used

to process food under temperature changes. [1967 ex.s. c 121 § 9.]

69.07.100 Establishments exempted from provisions of chapter. The provisions of this chapter shall not apply to establishments issued a permit or licensed under the provisions of:

- (1) Chapter 15.32 RCW, the Dairies and dairy products act;
- (2) Chapter 69.12 RCW, the Bakeries and bakery products act;
- (3) Chapter 69.16 RCW, the Macaroni and macaroni products act;
- (4) Chapter 69.20 RCW, the Confections act;
- (5) Chapter 69.24 RCW, the Egg and egg products act;
- (6) Chapter 69.28 RCW, the Washington state honey act;
- (7) Chapter 16.49 RCW, the Meat inspection act;
- (8) Title 66 RCW, relating to alcoholic beverage control; and
- (9) Chapter 69.30 RCW, the Sanitary control of shellfish act: *Provided*, That if any such establishments process foods not specifically provided for in the above entitled acts, such establishments shall be subject to the provisions of this chapter.

The provisions of this chapter shall not apply to restaurants or food service establishments. [1967 ex.s. c 121 § 10.]

69.07.110 Enforcement of chapter. The department may use all the civil remedies provided for in chapter 69.04 RCW (The Uniform Washington Food, Drug, and Cosmetic Act) in carrying out and enforcing the provisions of this chapter. [1967 ex.s. c 121 § 11.]

69.07.120 Disposition of moneys. All moneys received by the department under the provisions of this chapter shall be paid into the state treasury. [1967 ex.s. c 121 § 12.]

69.07.130 Chapter not to affect existing liabilities. The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on July 30, 1967. [1967 ex.s. c 121 § 13.]

69.07.140 Violations—Warning notice. Nothing in this chapter shall be construed as requiring the department to report for prosecution violations of this chapter when it believes that the public interest will best be served by a suitable notice of warning in writing. [1967 ex.s. c 121 § 14.]

69.07.150 Violations—Penalties. Any person violating any provision of this chapter or any rule or regulation adopted hereunder shall be guilty of a misdemeanor and guilty of a gross misdemeanor for any second and subsequent violation: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1967 ex.s. c 121 § 15.]

69.07.160 Authority of director and department under chapter 69.04 RCW not impaired by any provision of chapter 69.07 RCW. The authority granted to the director and to the department under the provisions of the Uniform Washington Food, Drug, and Cosmetic Act (chapter 69.04 RCW), as now or hereafter amended, shall not be deemed to be reduced or otherwise impaired as a result of any provision or provisions of the Washington Food Processing Act (chapter 69.07 RCW). [1969 c 68 § 4.]

69.07.900 Chapter is cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1967 ex.s. c 121 § 16.]

69.07.910 Severability—1967 ex.s. c 121. 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. [1967 ex.s. c 121 § 17.]

69.07.920 Short title. This chapter shall be known and designated as the Washington food processing act. [1967 ex.s. c 121 § 18.]

Chapter 69.08 FLOUR, WHITE BREAD, AND ROLLS

Sections

69.08.010	Definitions.
69.08.020	Director, duty to enforce.
69.08.030	Flour—Content requirements.
69.08.040	Bread and rolls—Content requirements.
69.08.045	Specialty breads or rolls, macaroni or macaroni products, enriched white flour required—Exemptions.
69.08.050	Intrastate and interstate standards to conform.
69.08.060	Shortage of ingredients—Procedure.
69.08.070	Regulations, how and where kept—Copies for distribution.
69.08.080	Right of entry, to take samples, etc.
69.08.090	Penalty.

Grist mills: Chapter 19.44 RCW.

Weights and measures, bread: RCW 19.92.100–19.92.120.

69.08.010 Definitions. When used in this chapter, unless the context otherwise requires:

(1) "Flour" includes and shall be limited to the foods commonly known in the milling and baking industries as (a) white flour, also known as wheat flour or plain flour; (b) bromated flour; (c) self-rising flour, also known as self-rising white flour or self-rising wheat flour, and (d) phosphated flour, also known as phosphated white flour or phosphated wheat flour, but excludes whole wheat flour;

(2) "White bread" means any bread made with flour, as defined in (1), whether baked in a pan or on a hearth or screen, which is commonly known or usually represented and sold as white bread, including Vienna bread, French bread, and Italian bread;

(3) "Specialty breads" shall mean any yeast-raised bread, such as potato bread, raisin bread or egg sesame bread other than that bread defined in subsection (2) above;

(4) "Rolls" includes plain white rolls and buns of the semibread dough type, namely: soft rolls, such as hamburger rolls, hot dog rolls, Parker House rolls, and hard rolls, such as Vienna rolls, Kaiser rolls, but shall not include yeast-raised sweet rolls or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls;

(5) "Specialty rolls" shall mean any sweet rolls or sweet buns, including those made with fillings or coatings, such as cinnamon rolls or buns, butterfly rolls, doughnuts, and English muffins, other than those rolls defined in subsection (4) above;

(6) "Director" means the director of the state department of agriculture of the state of Washington;

(7) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread or rolls. [1971 c 27 § 1; 1945 c 192 § 1; Rem. Supp. 1945 § 6294-160.]

69.08.020 Director, duty to enforce. The director is hereby charged with the duty of enforcing the provisions of this chapter and he is hereby authorized and directed to make, amend or rescind regulations for the efficient enforcement of this chapter. [1945 c 192 § 4; Rem. Supp. 1945 § 6294-163.]

69.08.030 Flour—Content requirements. It shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale, for human consumption in this state, flour, as defined in RCW 69.08.010, unless the following vitamins and minerals are contained in each pound of such flour; not less than 2.0 mg and not more than 2.5 mg of thiamine; not less than 1.2 mg and not more than 1.5 mg of riboflavin; not less than 16.0 mg and not more than 20.0 mg of niacin or niacin-amide; not less than 13.0 mg and not more than 16.5 mg of iron (Fe); except in the case of self-rising flour which in addition to the above ingredients shall contain not less [than] 500 mg and not more than 1500 mg of calcium (Ca): *Provided, however,* That the terms of this section shall not apply to flour sold to distributors, bakers or other processors, if the purchaser furnishes to the seller a certificate in such form as the director shall by regulation prescribe, certifying that such flour will be (1) resold to a distributor, baker or other processor, or (2) used in the manufacture, mixing or compounding of flour, white bread or rolls enriched to meet the requirements of this chapter, or (3) used in the manufacture of products other than flour, white bread or rolls. It shall be unlawful for any such purchaser so furnishing any such certificate to use or resell the flour so purchased in any manner other than as prescribed in this section. [1945 c 192 § 2; Rem. Supp. 1945 § 6294-161.]

69.08.040 Bread and rolls—Content requirements. It shall be unlawful for any person to manufacture, bake, sell, or offer for sale, for human consumption in this state, any white bread or rolls as defined in RCW 69.08.010, unless the following vitamins and minerals are contained in each pound of such bread or rolls: Not

less than 1.1 mg and not more than 1.8 mg of thiamine; not less than 0.7 mg and not more than 1.6 mg of riboflavin; not less than 10.0 mg and not more than 15.0 mg of niacin; not less than 8.0 mg and not more than 12.5 mg of iron (Fe). [1945 c 192 § 3; Rem. Supp. 1945 § 6294-162.]

69.08.045 Specialty breads or rolls, macaroni or macaroni products, enriched white flour required—Exemptions. It shall be unlawful for any person to manufacture, bake, sell, or offer for sale for human consumption in this state, any specialty breads, or specialty rolls as defined in RCW 69.08.010 or macaroni or macaroni products as defined in RCW 69.16.020 without using enriched white flour in the baking thereof: *Provided, however,* That those products which contain one hundred percent whole wheat or graham flour are exempted from the requirements of this section. [1971 c 27 § 2.]

69.08.050 Intrastate and interstate standards to conform. Whenever the vitamin and mineral requirements set forth in RCW 69.08.030 and 69.08.040 are no longer in conformity with the legally established standards governing the interstate shipment of enriched flour and enriched white bread or enriched rolls, the director, in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods within the provisions of this chapter, is authorized and directed to modify or revise such requirements to conform with amended standards governing interstate shipments. [1945 c 192 § 5; Rem. Supp. 1945 § 6294-164.]

69.08.060 Shortage of ingredients—Procedure. In the event of findings by the director that there is an existing or imminent shortage of any ingredient required by RCW 69.08.030 and 69.08.040, and that because of such shortage the sale and distribution of flour or white bread or rolls may be impeded by the enforcement of this chapter, the director shall issue a regulation, to be effective immediately upon issuance, permitting the omission of such ingredient from flour or white bread or rolls; and if he finds it necessary or appropriate, excepting such foods from labeling requirements until the further regulation of the director. Any such findings may be made without hearing, on the basis of an order or of factual information supplied by the appropriate federal agency or officer. In the absence of any such regulation of the appropriate federal agency or factual information supplied by it, the director on his own motion may, and upon receiving the sworn statements of ten or more persons subject to this chapter that they believe such a shortage exists or is imminent shall, within twenty days thereafter hold a public hearing with respect thereto at which any interested person may present evidence; and shall make findings based upon the evidence presented. The director shall publish notice of any such hearing at least ten days prior thereto. Whenever the director has reason to believe that such shortage no longer exists, he shall hold a public hearing, after at least ten days' notice shall have been given, at which any interested person

may present evidence, and he shall make findings based upon the evidence so presented. If his findings be that such shortage no longer exists, he shall issue a regulation to become effective not less than thirty days after publication thereof, revoking such previous regulation: *Provided, however,* That undisposed floor stocks of flour on hand at the effective date, of such revocation regulation, or flour manufactured prior to such effective date, for sale in this state may thereafter be lawfully sold or disposed of. [1945 c 192 § 6; Rem. Supp. 1945 § 6294-165.]

69.08.070 Regulations, how and where kept—Copies for distribution. All regulations adopted by the director pursuant to this chapter shall be kept in a well bound book in the office of the director and shall become effective upon such date as the director shall fix. Printed copies of such regulations shall be made available for public distribution. [1945 c 192 § 7; Rem. Supp. 1945 § 6294-166.]

69.08.080 Right of entry, to take samples, etc. For the purpose of this chapter, the director, or such officers or employees under his supervision as he may designate, is authorized to take samples for analysis and to conduct examinations and investigations, and to enter, at reasonable times, any factory, mill, bakery, warehouse, shop or establishment where flour, white bread or rolls are manufactured, processed, packed, sold or held, or any vehicle being used for the transportation thereof, and to inspect any such place or vehicle and any flour, white bread or rolls therein, and all pertinent equipment, materials, containers and labeling. [1945 c 192 § 8; Rem. Supp. 1945 § 6294-167.]

69.08.090 Penalty. Any person who violates any of the provisions of this chapter or the orders, rules or regulations promulgated by the director under authority thereof, shall upon conviction thereof be subjected to fine for each and every offense, in a sum not exceeding one thousand dollars, or to imprisonment, not to exceed ninety days. [1945 c 192 § 9; Rem. Supp. 1945 § 6294-168.]

Chapter 69.11 BAKERIES AND BAKERY PRODUCTS—1903 ACT

Sections

69.11.010	Bakeries—Sanitary conditions.
69.11.020	Lavatories, etc., apart from bake room.
69.11.030	Bake room—Size—Plastering, etc.
69.11.040	Flour and meal products, how kept.
69.11.050	Products to be kept separate from sleeping rooms.
69.11.060	Inspection—Certificate to owner.
69.11.070	Order to alter, service of notice of.
69.11.080	Employment of diseased persons prohibited.
69.11.090	Persons under sixteen—Work hours for.
69.11.100	Penalty.

Reviser's note: "Director of agriculture" has been substituted for "commissioner of labor" throughout this chapter since the powers and duties of the commissioner have devolved upon the director of agriculture through a chain of statutes as follows: 1913 c 60 § 6(7); 1921 c 7 § 93(2). See RCW 43.23.090.

69.11.010 Bakeries—Sanitary conditions. All buildings or rooms occupied as biscuit, bread or cake bakeries shall be drained or plumbed in a manner conducive to the proper healthful and sanitary condition thereof, and constructed with air shafts and windows or ventilating pipes sufficient to insure ventilation as the director of agriculture shall direct and no cellar or basement not used as a bakery on the thirtieth day of January 1919 shall thereafter be used and occupied as a bakery and a cellar or basement theretofore occupied as a bakery shall, when once closed, not be reopened for use as a bakery. [1919 c 206 § 1; 1903 c 135 § 1; RRS § 6285. Formerly RCW 69.12.130.]

69.11.020 Lavatories, etc., apart from bake room. Every such bakery shall be provided with a proper washroom and water closet, or closets, apart from the bake room or rooms where the manufacturing of such products is conducted; and no water closet, earth closet, privy or ash pit shall be within or communicate directly with a bake shop. [1903 c 135 § 2; RRS § 6286. Formerly RCW 69.12.140.]

69.11.030 Bake room—Size—Plastering, etc. Every room used for the manufacture of flour or meal food shall be at least eight feet in height, the side walls of such room shall be plastered or wainscoted, the ceiling plastered or ceiled with lumber or metal, and if required by the director of agriculture, shall be white-washed at least once in three months; the furniture and utensils of such room shall be so arranged as to be easily moved in order that the furniture and floor may at all times be kept in proper healthful sanitary condition. [1903 c 135 § 3; RRS § 6287. Formerly RCW 69.12.150.]

69.11.040 Flour and meal products, how kept. The manufactured flour or meal food products shall be kept in perfectly dry and airy rooms, so arranged that the floors, shelves and all other facilities for storing the same can be easily and perfectly cleaned. [1903 c 135 § 4; RRS § 6288. Formerly RCW 69.12.160.]

69.11.050 Products to be kept separate from sleeping rooms. The sleeping places for persons employed in a bakery shall be kept separate from the room or rooms where flour or meal food products are manufactured or stored. [1903 c 135 § 5; RRS § 6289. Formerly RCW 69.12.170.]

69.11.060 Inspection—Certificate to owner. After an inspection of a bakery has been made by the director of agriculture and it is found to conform to the provisions of this chapter, said director shall issue a certificate to the owner or operator of such bakery, that it is conducted in compliance with all the provisions of this chapter, but where orders are issued by said director to improve the condition of a bakery, no such certificate shall be issued until such order and the provisions of this chapter have been complied with. [1903 c 135 § 6; RRS § 6290.]

69.11.070 Order to alter, service of notice of. The owner, agent or lessee of any property affected by the provisions of this chapter, shall, within thirty days after the service of notice upon him, of an order issued by the director of agriculture requiring any alterations to be made in or upon such premises, comply therewith, or cease to use or allow the use of such premises as a bakeshop; such notice shall be in writing and may be served upon such owner, agent, or lessee, either personally or by mail, and a notice by registered letter, postage prepaid, mailed to the last known address of such owner, agent, or lessee shall be deemed sufficient for the purposes of this chapter. [1903 c 135 § 7; RRS § 6291.]

69.11.080 Employment of diseased persons prohibited. No employer shall require, permit or suffer any person to work in his bakeshop who is affected with tuberculosis, or with scrofulous diseases, or with any venereal disease or with any communicable skin affection or contagious disease and no person so affected shall work or remain in a bakeshop. Every employer is hereby required to maintain himself and his employees in a clean and sanitary condition while engaged in the manufacture, handling or sale of such food products. [1903 c 135 § 8; RRS § 6292.]

69.11.090 Persons under sixteen—Work hours for. No employer shall require, permit or suffer any person under sixteen years of age to work in his bakeshop between the hours of eight o'clock in the evening and five o'clock in the morning. [1903 c 135 § 9; RRS § 6293. Formerly RCW 49.28.090, part.]

69.11.100 Penalty. Any person who violates the provisions of this chapter or refuses to comply with the requirements of the director of agriculture, as provided herein, shall be guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction, shall be fined not less than twenty-five nor more than fifty dollars or imprisoned not more than ten days for the first offense; and shall be fined not less than fifty nor more than one hundred dollars and imprisoned not less than ten nor more than thirty days for each offense after the first. [1903 c 135 § 10; RRS § 6294. Formerly RCW 49.28.090, part and 69.12.180.]

Chapter 69.12 BAKERIES AND BAKERY PRODUCTS—1937 ACT

Sections	
69.12.010	Declaration of policy.
69.12.020	Definitions.
69.12.030	Bakery license—Application.
69.12.040	Distributor's license—Application.
69.12.050	License fees—Expiration date—Nontransferability.
69.12.060	Revocation or suspension of license.
69.12.070	Diseased persons barred—Health certificates.
69.12.080	Inspection of premises and vehicles.
69.12.090	Sales on consignment—Rebates and return of products prohibited.
69.12.100	Statement of prices, terms, etc.—Filing and posting.
69.12.110	Subpoenas and taking testimony.
69.12.120	Penalty.

Weights and measures, bread: RCW 19.92.100–19.92.120.

69.12.010 Declaration of policy. This chapter is in exercise of the police powers of the state for the protection of the safety, health and welfare of the people of the state. It hereby is found and declared that the public welfare requires control and regulation of the manufacture and distribution of bread and other bakery products and of persons engaged therein, in order that there may be prevented or eliminated unsanitary, unhealthful, fraudulent, and unfair or uneconomic practices and conditions in connection with such manufacture or distribution which endanger public health, defraud consumers, jeopardize the public source and supply of a nourishing, healthful food, and seriously affect adversely a large and essential industry. It is further found and declared that the regulation of the commercial manufacture and distribution of bakery products as in this chapter provided is in the interest of the economic and social well-being and the health and safety of the state and all of its people. [1937 c 137 § 1; RRS § 6284–1.]

Severability—1937 c 137: "If any clause, sentence, paragraph, section or part of this act shall, for any reason, be adjudged or decreed to be invalid by any court of competent jurisdiction, such judgment or decree shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which said judgment or decree shall have been rendered." [1937 c 137 § 12.] This applies to RCW 69.12.010–69.12.120.

69.12.020 Definitions. Except where the context indicates a different meaning, terms used in this chapter shall be defined as follows:

(1) "Bakery" means any place, premises or establishment where any bakery product is regularly prepared, processed or manufactured for sale other than for consumption on the premises where originally prepared, processed or manufactured.

(2) "Bakery product" includes bread, rolls, cakes, pies, cookies, doughnuts, biscuits and all similar goods, to be used for human food.

(3) "Person" includes an individual, partnership or corporation. [1937 c 137 § 2; RRS § 6284–2.]

69.12.030 Bakery license—Application. No person shall operate or participate in the operation of any bakery within this state without having obtained from the director of agriculture a bakery license for that bakery issued and in effect under this chapter. Application for such license shall be made in writing and under oath to the director of agriculture, on such forms and with such pertinent information as he shall require. Such license shall be granted as a matter of right unless conditions exist which are grounds for a cancellation or revocation of a license as hereinafter set forth. [1937 c 137 § 3; RRS § 6284–3.]

69.12.040 Distributor's license—Application. No person hereafter shall engage within this state in the sale or distribution of any bakery product, other than exclusively at retail at a fixed place or places of business, without holding a license to do so issued to that person by the director of agriculture. A distributor's license shall not be required of any person distributing solely bakery products manufactured by him in a bakery

licensed under this chapter. Application for such license shall be filed in writing and under oath with the director of agriculture upon such form as shall be prescribed and supplied by him. [1937 c 137 § 4; RRS § 6284-4.]

69.12.050 License fees—Expiration date—Nontransferability. (1) There shall be paid to the director of agriculture with each application for a bakery license or distributor's license or for renewal of such license an annual license fee of five dollars. All such license and renewal fees shall be deposited in the state's general fund.

(2) Each such license shall expire on December 31st following its date of issue, unless sooner revoked for cause. Renewal may be obtained annually by surrendering to the director of agriculture the old license certificate and paying the required annual license fee. Such license shall not be transferable to any person or be applicable to any location other than that for which originally issued. [1967 c 240 § 44; 1937 c 137 § 5; RRS § 6284-5.]

Severability—1967 c 240: See note following RCW 43.23.010.

Bakery license fund abolished and funds transferred to state general fund. See 1967 c 240 §§ 47, 48.

69.12.060 Revocation or suspension of license. (1) The director of agriculture may cancel or suspend any such license if he finds after proper investigation that (a) the licensee has violated any provisions of this chapter or of any other law of this state relating to the operations of bakeries or the manufacture or handling of any bakery product, or any regulation effective thereunder or (b) the licensed bakery premises or any equipment used therein or in connection therewith is in an unsanitary condition and the licensee has failed or refused to remedy the same within ten days after receipt from the director of written notice to do so.

(2) No license shall be revoked or suspended by the director without delivery to the licensee of a written statement of the charge involved and an opportunity to answer such charge within ten days from the date of such notice.

(3) Any order made by the director suspending or revoking any license may be reviewed by certiorari in the superior court of the county in which the licensee is located within ten days of the date notice in writing of the director's order revoking or suspending such license has been served upon him. [1937 c 137 § 6; RRS § 6284-6.]

69.12.070 Diseased persons barred—Health certificates. (1) No person afflicted with any contagious or infectious disease shall work or be permitted to work or be employed in any bakery.

(2) No person shall work or be permitted to work in any bakery in storing, preparing, mixing or handling any bakery product or any ingredient thereof without holding a certificate from a physician, duly accredited for that purpose by the state board of health, certifying that such person has been examined and found free from any contagious or infectious disease. The state board of health may fix a maximum fee, not exceeding one dollar,

which may be charged by a physician for such examination. Such certificate shall be effective for a period of six months and thereafter must be renewed following proper physical examination as aforesaid. Where such certificate is required and provided under municipal ordinance upon examination deemed adequate by the state board of health, certificates issued thereunder shall be sufficient under this chapter.

(3) Any such certificate shall be revoked by the state board of health at any time the holder thereof is found, after proper physical examination, to be afflicted with any communicable or infectious disease. Refusal of any person employed in a bakery to submit to proper and reasonable physical examination upon written demand of the state board of health or the director of agriculture shall be cause for revocation of that person's health certificate. [1937 c 137 § 7; RRS § 6284-7.]

69.12.080 Inspection of premises and vehicles. The state director of agriculture shall cause to be made periodically a thorough inspection of each licensed bakery to determine whether or not the premises are constructed, equipped and operated in accordance with the requirements of this chapter and of all other laws of this state relating to bakeries or bakery products and all regulations effective thereunder. Such inspection shall also be made of each vehicle used by a bakery or distributor licensed under this chapter in transporting or distributing any bakery products within this state. The director shall employ no person as inspector who is a member or employee of a bakery or bakery operators' association or who is interested in any bakery or such association. [1939 c 44 § 1; 1937 c 137 § 8; RRS § 6284-8.]

69.12.090 Sales on consignment—Rebates and return of products prohibited. No baker, or other seller or distributor of bakery products, his agents or employees, shall deliver bakery products on consignment or otherwise than pursuant to a bona fide sale of such products; or give any refund, credit, exchange, discount, gift, or allowance, for or in connection with the sale or delivery of bakery products; or resume possession or accept the return of any bakery product. No purchaser of bakery products shall accept delivery of such products on consignment or otherwise than pursuant to a bona fide sale of such products; or return any bakery product to any seller thereof; or accept any refund, credit, exchange, discount, gift, or allowance for or in connection with the purchase or delivery of bakery products. This paragraph shall not be construed to prohibit such discounts as are based upon quantities, cash payments, or reasonable customer classification, and which are openly published and equally available to all who fall within their terms. [1945 c 169 § 1 (adding to 1937 c 137 a new section, § 8(a)); Rem. Supp. 1945 § 6284-8(a).]

69.12.100 Statement of prices, terms, etc.—Filing and posting. (1) Each person hereafter operating a bakery or operating as a bakery distributor, shall file with the director of agriculture in duplicate and in writing and under oath a statement of all prices, discounts,

rebates, allowances and other terms or conditions of sale or payment, thereafter by him to be quoted, offered, charged, made or allowed upon each kind of bakery product offered by him for sale in this state, and shall keep a true and complete copy of said statement posted conspicuously at each of his places of such business within this state, or upon each vehicle used in distribution of bakery products if no fixed place of business is maintained. Such statement may be revised or added to by filing with the director of agriculture a supplementary written statement in duplicate and under oath, the revision or addition to become effective no sooner than ten days after its receipt by the director of agriculture.

(2) On and after fifteen days after the effective date of this chapter no such person shall sell or display or offer for sale within this state any bakery product the price and terms and conditions of sale of which shall not have been filed and posted as aforesaid, nor any price or upon any term or condition or with any rebate, discount or allowance, other than the applicable price, term, condition, rebate, discount or allowance specified for that type of bakery product in the statement of that person then on file with the director of agriculture and posted as aforesaid. [1937 c 137 § 9; RRS § 6284-9.]

69.12.110 Subpoenas and taking testimony. In any proceeding under this chapter the director of agriculture may administer oaths and issue subpoenas, summon witnesses and take testimony of any person within the state of Washington. [1937 c 137 § 10; RRS § 6284-10.]

69.12.120 Penalty. Any person violating any provision of this chapter shall be guilty of a misdemeanor. Each day such violation continues shall constitute a separate offense. [1937 c 137 § 11; RRS § 6284-11.]

Chapter 69.16 MACARONI AND MACARONI PRODUCTS

Sections	
69.16.010	Declaration of policy.
69.16.015	Definitions.
69.16.020	"Macaroni products" defined.
69.16.021	"Macaroni factory" defined.
69.16.022	"Person" defined.
69.16.023	"Distributor" defined.
69.16.030	Factory permit—Application.
69.16.040	Distributor's permit—Application.
69.16.050	Permit fees—Use of funds.
69.16.060	Expiration date—Renewal—Nontransferability— Change of owner.
69.16.070	Permit—Revocation or suspension.
69.16.080	Revocation or suspension—Hearing.
69.16.090	Appeal.
69.16.100	Service of papers.
69.16.110	Work by diseased persons prohibited.
69.16.115	Food and beverage service worker's permit required.
69.16.120	Food and beverage service worker's permit required— Revocation—Refusal to furnish evidence of freedom from disease.
69.16.130	Inspection of factories and vehicles.
69.16.140	Statement of prices, terms, etc.
69.16.150	Unlawful to sell without statement.
69.16.160	Specific unlawful acts.
69.16.170	Penalty.
69.16.900	Severability—1939 c 190.

*Macaroni or macaroni products, enriched white flour required—
Exemptions: RCW 69.08.045.*

69.16.010 Declaration of policy. This chapter is in exercise of the police powers of the state for the protection of the safety, health and welfare of the people of the state; it is hereby found and declared that the public welfare requires control and regulation of the manufacture and distribution of macaroni, noodles and related products and of persons engaged therein, in order that there may be prevented or eliminated insanitary, unhealthful, fraudulent, unfair or uneconomic practices and conditions in connection with such manufacture or distribution which endanger public health, defraud consumers, and jeopardize the public source and supply of a nourishing, healthful food. It is further found and declared that the regulation of the commercial manufacture and distribution of macaroni, noodles and related products as provided by this chapter is in the interest of the economic and social well-being and the health and safety of the state and its people, and is a necessary subject for immediate general legislation operating uniformly throughout the state. [1939 c 190 § 1; RRS § 6294-101.]

69.16.015 Definitions. Except where the context indicates a different meaning, terms used in this chapter shall be interpreted and construed as defined herein. [1939 c 190 § 2; RRS § 6294-102.]

69.16.020 "Macaroni products" defined. "Macaroni products" shall mean and include macaroni, spaghetti, vermicelli, noodles and all related products in whatever form or style the same may be prepared. [1939 c 190 § 3; RRS § 6294-103. FORMER PART OF SECTION: 1939 c 190 §§ 4 and 6 now codified as RCW 69.16.021 and 69.16.023.]

69.16.021 "Macaroni factory" defined. "Macaroni factory" shall mean any place, premises or establishment where any macaroni products are regularly prepared, processed or manufactured for sale rather than for consumption on such premises. [1939 c 190 § 4; RRS § 6294-104. Formerly RCW 69.16.020, part.]

69.16.022 "Person" defined. "Person" shall include an individual, partnership, corporation, association or club. [1939 c 190 § 5; RRS § 6294-105.]

69.16.023 "Distributor" defined. "Distributor" shall mean any person engaged within this state in the sale or distribution of any macaroni product by some method other than exclusively at retail at a fixed place or places of business, but shall not include any person distributing or selling macaroni products manufactured in a macaroni factory licensed under this chapter. [1939 c 190 § 6; RRS § 6294-106. Formerly RCW 69.16.020, part.]

69.16.030 Factory permit—Application. No person shall operate, or participate in the management and operation of any macaroni factory within this state without a macaroni factory permit therefor, under the provisions of this chapter. Application for such permit

shall be made in writing and under oath to the director of agriculture, upon such forms and with such pertinent information as he shall require. [1939 c 190 § 7; RRS § 6294-107.]

69.16.040 Distributor's permit—Application. No person shall engage within this state in the business of distributor without a permit to do so. Application for such permit shall be made in writing and under oath to the director of agriculture upon such form as shall be prescribed and supplied by him. [1939 c 190 § 8; RRS § 6294-108.]

69.16.050 Permit fees—Use of funds. There shall be paid to the director of agriculture with each application for a macaroni factory permit or distributor's permit or for renewal of such permit an annual fee of twenty-five dollars. All such permit and renewal fees shall be deposited in the state's general fund. [1967 c 240 § 45; 1939 c 190 § 9; RRS § 6294-109.]

Severability—1967 c 240: See note following RCW 43.23.010.
Macaroni license fund abolished and funds transferred to state general fund. See 1967 c 240 §§ 47, 48.

69.16.060 Expiration date—Renewal—Non-transferability—Change of owner. Each permit provided in this chapter shall expire on December 31st, following its date of issue, unless sooner revoked for cause. Renewal thereof may be obtained from the director by surrendering the previous year's permit and paying the permit fee. No permit shall be transferable nor shall it be applicable to any location other than that for which it was originally issued. Upon change of ownership or management of any macaroni factory the new owner or manager before assuming control shall notify the director of agriculture of the change in writing and obtain a new permit covering that establishment. [1939 c 190 § 10; RRS § 6294-110.]

69.16.070 Permit—Revocation or suspension. The director of agriculture may cancel or suspend any permit provided in this chapter if upon investigation he determines (1) that the permittee has violated any provision of this chapter or of any other law of this state relating to the operation of factories for the manufacture or handling of any macaroni product, or any regulation effective thereunder; or (2) that the factory premises or any equipment of the permittee used therein or in connection therewith is in an insanitary condition and that the permittee has failed or refused to remedy such condition within ten days after written notice to do so from the director. [1939 c 190 § 11; RRS § 6294-111.]

69.16.080 Revocation or suspension—Hearing. No permit shall be revoked or suspended by the director until after a written statement of the grounds therefor has been served upon the permittee and he is given at least ten days within which to answer such charge. For the purpose of making an investigation or of conducting a hearing with reference to such proposed revocation or suspension, the director of agriculture shall have power

to conduct such hearing, administer oaths, take depositions, issue subpoenas and compel the attendance of witnesses and the production of books, papers, documents and testimony. [1939 c 190 § 12; RRS § 6294-112.]

69.16.090 Appeal. Within thirty days after an order revoking or suspending a permit is made by the director of agriculture any party aggrieved thereby may appeal to the superior court of the county of his residence in this state. Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail or personally on the director of agriculture. The director shall, within twenty days after receipt of such notice of appeal, serve and file notice of appearance and such appeal shall thereupon be deemed at issue. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No bond shall be required on such appeal but such appeal shall not stay proceedings before the director. The trial of said issues shall be by the court, and an appeal shall lie from its judgment as in other civil cases. [1939 c 190 § 13; RRS § 6294-113.]

69.16.100 Service of papers. Service as required in this chapter may be made by registered mail, return receipt requested, addressed to the permittee at the address given by him in his most recently filed application for a permit. [1939 c 190 § 14; RRS § 6294-114.]

69.16.110 Work by diseased persons prohibited. No person afflicted with any contagious or infectious disease shall work or be permitted to work or be employed in any macaroni factory. [1939 c 190 § 15; RRS § 6294-115. FORMER PART OF SECTION: 1939 c 190 § 16 now codified as RCW 69.16.115.]

69.16.115 Food and beverage service worker's permit required. No person shall work or be permitted to work in any macaroni factory in storing, preparing, mixing, or handling any macaroni product or any ingredient thereof without holding a food and beverage service worker's permit as prescribed by the state board of health as provided for in RCW 69.06.010. These permits shall be further subject to the provisions of RCW 69.06.020, 69.06.050 and 69.06.060. [1961 c 30 § 1; 1939 c 190 § 16; RRS § 6294-116. Formerly RCW 69.16.110, part.]

69.16.120 Food and beverage service worker's permit required—Revocation—Refusal to furnish evidence of freedom from disease. Any food and beverage service worker's permit shall be revoked in accordance with procedures prescribed by the state board of health at any time the holder thereof is found to be afflicted with any communicable or infectious disease. Refusal of any person employed in a macaroni factory to furnish evidence of freedom from any communicable or infectious disease upon proper demand by the state board of health or a local health officer shall be cause for revocation of that person's food and beverage service worker's permit. [1961 c 30 § 2; 1939 c 190 § 17; RRS § 6294-117.]

69.16.130 Inspection of factories and vehicles. The director of agriculture shall have the right to inspect any macaroni factory for which a permit has been issued under this chapter to determine whether or not the premises are constructed, equipped and operated in accordance with the requirements of this chapter and of all other laws of this state applicable either to macaroni factories or macaroni products, and of all regulations effective thereunder. Such inspection shall also be made of each vehicle used by a macaroni factory or distributor holding a permit under this chapter in transporting or distributing any macaroni products within this state. [1939 c 190 § 18; RRS § 6294-118.]

69.16.140 Statement of prices, terms, etc. Each person hereafter operating a macaroni factory or operating as a distributor, shall file with the director of agriculture in duplicate and under oath a written statement of all prices, discounts, rebates, allowances and other terms or conditions of sale or payment, thereafter by him to be quoted, offered, charged, made or allowed upon each kind of macaroni product offered by him for sale in this state, and shall keep a true and complete copy of said statement posted conspicuously at each of his places of such business within this state, or, if no fixed place of business is maintained, upon each vehicle used in distribution of macaroni products. Such statement may be revised or added to by filing with the director of agriculture a supplementary written statement in duplicate and under oath, the revision or addition to become effective not less than ten days after its receipt by the director. [1939 c 190 § 19; RRS § 6294-119.]

69.16.150 Unlawful to sell without statement. On and after fifteen days after the effective date of this chapter no person shall sell, or display or offer for sale within this state any macaroni product the price and terms and conditions of sale of which have not been filed and posted as provided in this chapter, nor shall any price be quoted nor any term, condition, rebate, discount, or allowance, be offered or accepted, unless the applicable price, term, condition, rebate, discount or allowance specified for that type of macaroni product is contained in the statement of that person then on file with the director of agriculture and posted as provided in this chapter. [1939 c 190 § 20; RRS § 6294-120.]

69.16.160 Specific unlawful acts. In addition to the acts by this chapter made unlawful, it shall be unlawful in connection with the operation of any macaroni factory or the sale or distribution of any macaroni product:

(1) To sell, advertise, describe, brand, mark, label or pack macaroni or any simulation or imitation thereof in a manner which is calculated to mislead or deceive or has the tendency or capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public with respect to the grade, quality, quantity, substance, character, nature, origin, size, material, content, composition, color, preparation, or manufacture of such products or in any material respect.

(2) To sell, offer for sale, advertise, describe, brand, label or otherwise represent any macaroni or noodle

product as being a semolina or farina product when such is not true and correct.

(3) To use yellow coloring in, or yellow transparent containers for, any macaroni product in such manner as deceptively to import or imply to purchasers, prospective purchasers or the consuming public that such product contains egg in greater proportion than is in fact present, or in such manner as to mislead or deceive in any other respect.

(4) To advertise, describe, brand, label, or otherwise represent any product as containing a food ingredient which is not macaroni, found, or is not present in the advertised quantities, resulting in purchasers, prospective purchasers or the consuming public being misled or deceived.

(5) To use photographs, cuts, engraving, illustrations or pictorial or other adoptions or devices of industry products in catalogs, sales literature or advertisements or on packages or containers or otherwise in such manner as to have the capacity and tendency or effect of misleading or deceiving the purchaser or consuming public as to the grade, quality, quantity, substance, character, nature, origin, size material content, composition, coloring, preparation or manufacture of such products.

(6) To defame competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standings, or any other false representations, or falsely to disparage the grade, quality or manufacture of the products of competitors or of their business method, selling price, values, grade, terms, policies or services.

(7) To fail to brand, mark or identify macaroni products so as to disclose their true character, where such failure has the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public. [1939 c 190 § 21; RRS § 6294-121.]

69.16.170 Penalty. Any person violating any provision of this chapter shall be guilty of a misdemeanor. Each day such violation continues shall constitute a separate offense. [1939 c 190 § 22; RRS § 6294-122.]

69.16.900 Severability—1939 c 190. If any clause, sentence, paragraph, section or part of this chapter shall, for any reason, be adjudged or decreed to be invalid by any court of competent jurisdiction, such judgment or decree shall not affect, impair or invalidate the remainder of this chapter but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which said judgment or decree shall have been rendered. [1939 c 190 § 23; RRS § 6294-123.]

Chapter 69.20 CONFECTIONS

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Honey used in candy: RCW 15.60.130.

69.20.005 Declaration of policy. It is hereby found and declared that the protection of public health and welfare requires certain control and regulation of the manufacture and distribution of candy and other confectionery products and of the persons engaged therein, in order that there may be prevented or eliminated insanitary or unhealthful conditions in connection with such manufacture and distribution which endanger public health and jeopardize the public source and supply of a nourishing, healthful food. [1939 c 112 § 1; RRS § 6294–51.]

69.20.007 Definitions. Except where the context indicates a different meaning, terms used in this chapter shall be construed as defined herein. [1939 c 112 § 2; RRS § 6294–52.]

69.20.010 "Confection" defined. The term "confection" shall mean and include any solid combination of sugar or other saccharine substance, together with fruits, nuts, chocolate, or other flavoring or coloring substances. [1939 c 112 § 3; RRS § 6294–53. FORMER PARTS OF SECTION: 1939 c 112 § 4 now codified as RCW 69.20.011; 1939 c 112 § 5 now codified as RCW 69.20.012; 1939 c 112 § 6 now codified as RCW 69.12.013; 1939 c 112 § 7 now codified as RCW 69.12.014.]

69.20.011 "Confectioner" defined. The term "confectioner" shall mean any person who prepares, processes, manufactures, sells, or distributes any confection within the state of Washington: *Provided, however,* That this definition shall not be construed to include any person selling confections exclusively at retail in a fixed place or places of business. [1939 c 112 § 4; RRS § 6294–54. Formerly RCW 69.20.010, part.]

69.20.012 "Confectionery" defined. The term "confectionery" shall mean any place, premises, or establishment where confections are regularly prepared, processed, manufactured, sold, or distributed, exclusive, however, of any place, premises, or establishment where confections are sold exclusively at retail in a fixed place or places of business. [1939 c 112 § 5; RRS § 6294–55. Formerly RCW 69.20.010, part.]

69.20.013 "Person" defined. The term "person" shall include individual, firm, corporation, association, or club. [1939 c 112 § 6; RRS § 6294–56. Formerly RCW 69.20.010, part.]

69.20.014 "Director" defined. The term "director" shall mean the director of agriculture of the state of Washington. [1939 c 112 § 7; RRS § 6294–57. Formerly RCW 69.20.010, part.]

69.20.020 Confectioner's permit—Application. No confectioner shall operate within this state without a state confectioner's permit. Application for such permit shall be made in writing, and under oath, to the director upon such forms and with such pertinent information as shall be required by him. [1939 c 112 § 8; RRS § 6294–58.]

69.20.030 Permit—Expiration—Renewal—Nontransferability. Each permit issued under this chapter shall expire on December 31st following its date of issue, unless sooner revoked for cause. Renewal may be obtained annually by surrendering to the director the previous year's permit and paying to the director the required annual permit fee. Such renewal must be obtained on or before the first day of January of each succeeding year. No permit shall be transferable nor shall it be applicable to any location other than that for which it was originally issued. [1939 c 112 § 9; RRS § 6294–59.]

69.20.040 Annual permit fee—Use of funds. There shall be paid to the director with each application for a confectioner's permit or for a renewal thereof an annual permit fee of five dollars. All such permit and renewal fees shall be deposited in the state's general fund. [1967 c 240 § 46; 1939 c 112 § 10; RRS § 6294–60.]

Severability—1967 c 240: See note following RCW 43.23.010. *Confectioners license fund abolished and funds transferred to state general fund. See 1967 c 240 §§ 47, 48.*

69.20.050 Cancellation or suspension of permit. The director may cancel or suspend any permit issued under this chapter if upon investigation he determines (1) that the permittee has violated any provisions of this chapter, or of any other law of this state relating to the manufacture or handling of any confectionery product, or any regulation effective thereunder, or (2) that the confectionery premises or any equipment used therein or in connection therewith is in an insanitary condition and the permittee has failed or refused to remedy such condition within ten days after written notice to do so from the director. [1939 c 112 § 11; RRS § 6294–61.]

69.20.060 Revocation or suspension—Hearing. No permit shall be revoked or suspended by the director until after a written statement of the grounds therefor has been served upon the permittee and he is given at least ten days within which to answer such charge. For the purpose of making an investigation or of conducting a hearing with reference to such proposed revocation or suspension the director of agriculture shall have power

to conduct such hearing, administer oaths, take depositions, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents and testimony. [1939 c 112 § 12; RRS § 6294-62.]

69.20.070 Appeal. Within thirty days after an order revoking or suspending a permit under this chapter is made by the director, any party aggrieved thereby may appeal to the superior court of the county of his residence in this state. Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail, or personally, on the director. The director shall, within twenty days after receipt of such notice of appeal, serve and file notice of appearance and such appeal shall thereupon be deemed at issue. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No bond shall be required on such appeal, but such appeal shall not stay proceedings before the director. The trial of said issues shall be by the court, and an appeal shall lie from its judgment as in other civil cases. [1939 c 112 § 13; RRS § 6294-63.]

69.20.080 Service of papers. Service as required in this chapter may be made by registered mail, return receipt requested, addressed to the permittee at the address given by him in his most recently filed application for a permit. [1939 c 112 § 14; RRS § 6294-64.]

69.20.090 Work by diseased persons prohibited. No person afflicted with any contagious or infectious disease shall work or be permitted to work or be employed in any confectionery. [1939 c 112 § 15; RRS § 6294-65. FORMER PART OF SECTION: 1939 c 112 § 16 now codified as RCW 69.20.095.]

69.20.095 Medical examination and certification of workers—Fee—Renewals. No person shall work or be permitted to work in any confectionery in storing, preparing, mixing, or handling any product or any ingredient thereof without holding a certificate from a physician, duly accredited for that purpose by the state board of health, certifying that such person has been examined and found free from any contagious or infectious disease. The state board of health may fix a maximum fee, not exceeding two dollars, which may be charged by a physician for such examination. Such certificate shall be effective for a period of six months and thereafter must be renewed following proper physical examination as aforesaid. Where such certificate is required, and provided under municipal ordinance upon examination deemed adequate by the state board of health, certificates issued thereunder shall be sufficient under this chapter. [1939 c 112 § 16; RRS § 6294-66. Formerly RCW 69.20.090, part.]

69.20.100 Revocation of health certificate—Refusal to submit to examination. Any certificate issued under RCW 69.20.095 shall be revoked by the state board of health at any time the holder thereof is found,

after proper physical examination, to be afflicted with any communicable or infectious disease. Refusal of any person employed in a confectionery to submit to proper and reasonable physical examination upon written demand of the state board of health shall be cause for revocation of that person's health certificate. [1939 c 112 § 17; RRS § 6294-67.]

69.20.110 Noxious or injurious confections forbidden. No person shall prepare, process, manufacture, sell, distribute, or handle any confection containing any wormy, moldy, verminous, noxious, harmful, injurious, or deleterious substances. [1939 c 112 § 18; RRS § 6294-68.]

69.20.120 Inspection of premises and vehicles. The director shall have the right at such time or times as he may deem advisable to make an inspection of any confectionery for which a permit has been issued under this chapter to determine whether or not the premises are constructed, equipped, and operated so as to comply with the requirements of this chapter and of all other laws applicable to either confectioneries or confectionery products, and of all regulations effective thereunder. The director shall also have the right to inspect any vehicle used by a confectioner in selling, distributing, or handling confections. [1939 c 112 § 19; RRS § 6294-69.]

69.20.130 Filing trademarks and names. Every confectioner shall file with the director a facsimile under oath, and in duplicate, of each trademark and trade name, before the confection to which the same is applicable is sold, distributed, or handled within this state. [1939 c 112 § 20; RRS § 6294-70.]

69.20.140 Sales on consignment, rebates, etc., prohibited. It shall be unlawful for any confectioner to sell confectionery products upon consignment within this state, or to leave or place any confectionery products with any person, firm, or corporation within this state pursuant to an agreement or understanding, either express or implied, that any such confectionery products, or any part thereof, not sold by the person with whom it is left or placed will be taken back, or that the price or other consideration therefor will be returned in whole or in part or that any allowance, credit, commission, rebate, or other thing of value will be given therefor. Nothing in this section shall prohibit a confectioner from making an exchange of confectionery products, or granting a rebate, or allowance, or making any adjustment covering any confectionery products sold, or delivered in a damaged, broken, or unsalable condition: *Provided, however,* That such adjustment must be made within a period of thirty days after date of sale. [1939 c 112 § 21; RRS § 6294-71.]

69.20.150 Penalty. Any person violating any provisions of this chapter shall be guilty of a misdemeanor. Each day such violation continues shall constitute a separate offense. [1939 c 112 § 22; RRS § 6294-72.]

69.20.900 Severability—1939 c 112. If any clause, sentence, paragraph, section, or part of this chapter

shall, for any reason, be adjudged or decreed to be invalid by any court of competent jurisdiction, such judgment or decree shall not affect, impair, or invalidate the remainder of this chapter, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which said judgment or decree shall have been rendered. The legislature hereby declares that it would have passed this chapter, and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more other sections, subsections, sentences, clauses, or phrases be declared unconstitutional. [1939 c 112 § 23; RRS § 6294-73.]

Chapter 69.25 WASHINGTON WHOLESOME EGGS AND EGG PRODUCTS ACT

Sections

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69.25.010 Legislative finding. Eggs and egg products are an important source of the state's total supply of food, and are used in food in various forms. They are consumed throughout the state and the major portion thereof moves in intrastate commerce. It is essential, in the public interest, that the health and welfare of consumers be protected by the adoption of measures prescribed herein for assuring that eggs and egg products distributed to them and used in products consumed by them are wholesome, otherwise not adulterated, and properly labeled and packaged. Lack of effective regulation for the handling or disposition of unwholesome, otherwise adulterated, or improperly labeled or packaged egg products and certain qualities of eggs is injurious to the public welfare and destroys markets for wholesome, unadulterated, and properly labeled and packaged eggs and egg products and results in sundry losses to producers and processors, as well as injury to consumers. Unwholesome, otherwise adulterated, or improperly labeled or packaged products can be sold at lower prices and compete unfairly with the wholesome, unadulterated, and properly labeled and packaged products, to the detriment of consumers and the public generally. It is hereby found that all egg products and the qualities of eggs which are regulated under this chapter are either in intrastate commerce, or substantially affect such commerce, and that regulation by the director, as contemplated by this chapter, is appropriate to protect the health and welfare of consumers. [1975 1st ex.s. c 201 § 2.]

69.25.020 Definitions. When used in this chapter the following terms shall have the indicated meanings, unless the context otherwise requires:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly authorized representative.

(3) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof, or assignee for the benefit of creditors.

(4) "Adulterated" applies to any egg or egg product under one or more of the following circumstances:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(b) If it bears or contains any added poisonous or added deleterious substance (other than one which is: (i)

A pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the director, make such article unfit for human food;

(c) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, as enacted or hereafter amended;

(d) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394, as enacted or hereafter amended;

(e) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396, as enacted or hereafter amended: *Provided*, That an article which is not otherwise deemed adulterated under subsection (4)(c), (d), or (e) of this section shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the director in official plants;

(f) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human food;

(g) If it has been prepared, packaged, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(h) If it is an egg which has been subjected to incubation or the product of any egg which has been subjected to incubation;

(i) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(j) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394; or

(k) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(5) "Capable of use as human food" shall apply to any egg or egg product unless it is denatured, or otherwise identified, as required by regulations prescribed by the director, to deter its use as human food.

(6) "Intrastate commerce" means any eggs or egg products in intrastate commerce, whether such eggs or egg products are intended for sale, held for sale, offered for sale, sold, stored, transported, or handled in this state in any manner and prepared for eventual distribution in this state, whether at wholesale or retail.

(7) "Container" or "package" includes any box, can, tin, plastic, or other receptacle, wrapper, or cover.

(8) "Immediate container" means any consumer package, or any other container in which egg products, not consumer-packaged, are packed.

(9) "Shipping container" means any container used in packaging a product packed in an immediate container.

(10) "Egg handler" or "dealer" means any person who produces, contracts for or obtains possession or control of any eggs for the purpose of sale to another dealer or retailer, or for processing and sale to a dealer, retailer or consumer: *Provided*, That for the purpose of this chapter, "sell" or "sale" includes the following: Offer for sale, expose for sale, have in possession for sale, exchange, barter, trade, or as an inducement for the sale of another product.

(11) "Egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion, or historically have not been, in the judgment of the director, considered by consumers as products of the egg food industry, and which may be exempted by the director under such conditions as he may prescribe to assure that the egg ingredients are not adulterated and such products are not represented as egg products.

(12) "Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea, or any other specie of fowl.

(13) "Check" means an egg that has a broken shell or crack in the shell but has its shell membranes intact and contents not leaking.

(14) "Clean and sound shell egg" means any egg whose shell is free of adhering dirt or foreign material and is not cracked or broken.

(15) "Dirty egg" means an egg that has a shell that is unbroken and has adhering dirt or foreign material.

(16) "Incubator reject" means an egg that has been subjected to incubation and has been removed from incubation during the hatching operations as infertile or otherwise unhatchable.

(17) "Inedible" means eggs of the following descriptions: Black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).

(18) "Leaker" means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell.

(19) "Loss" means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or because it contains a bloody white, large meat spots, a large quantity of blood, or other foreign material.

(20) "Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss.

(21) "Inspection" means the application of such inspection methods and techniques as are deemed necessary by the director to carry out the provisions of this chapter.

(22) "Inspector" means any employee or official of the department authorized to inspect eggs or egg products under the authority of this chapter.

(23) "Misbranded" shall apply to egg products which are not labeled and packaged in accordance with the requirements prescribed by regulations of the director under RCW 69.25.100.

(24) "Official certificate" means any certificate prescribed by regulations of the director for issuance by an inspector or other person performing official functions under this chapter.

(25) "Official device" means any device prescribed or authorized by the director for use in applying any official mark.

(26) "Official inspection legend" means any symbol prescribed by regulations of the director showing that egg products were inspected in accordance with this chapter.

(27) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article under this chapter.

(28) "Official plant" means any plant which is licensed under the provisions of this chapter, at which inspection of the processing of egg products is maintained by the United States department of agriculture or by the state under cooperative agreements with the United States department of agriculture or by the state.

(29) "Official standards" means the standards of quality, grades, and weight classes for eggs, adopted under the provisions of this chapter.

(30) "Pasteurize" means the subjecting of each particle of egg products to heat or other treatments to destroy harmful, viable micro-organisms by such processes as may be prescribed by regulations of the director.

(31) "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meaning for purposes of this chapter as prescribed in chapter 69.04 RCW.

(32) "Plant" means any place of business where egg products are processed.

(33) "Processing" means manufacturing egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products.

(34) "Retailer" means any person in intrastate commerce who sells eggs to a consumer.

(35) "At retail" means any transaction in intrastate commerce between a retailer and a consumer.

(36) "Consumer" means any person who purchases eggs for his or her own family use or consumption; or any restaurant, hotel, boarding house, bakery, or other institution or concern which purchases eggs for serving to guests or patrons thereof, or for its own use in cooking or baking.

(37) "Candling" means the examination of the interior of eggs by the use of transmitted light used in a partially dark room or place. [1975 1st ex.s. c 201 § 3.]

69.25.030 Purpose—**Certain federal rules adopted by reference**—**Hearing, notice by director**—**Adoption of rules by director.** The purpose of this chapter is to promote uniformity of state legislation and regulations with the federal egg products inspection act, 21 U.S.C. sec. 1031, et seq., and regulations adopted thereunder. In accord with such declared purpose, any regulations adopted under the federal egg products inspection act relating to eggs and egg products, as defined in RCW 69.25.020 (11) and (12), in effect on

July 1, 1975, are hereby deemed to have been adopted under the provisions hereof. Further, to promote such uniformity, any regulations adopted hereafter under the provisions of the federal egg products inspection act relating to eggs and egg products, as defined in RCW 69.25.020 (11) and (12), and published in the federal register, shall be deemed to have been adopted under the provisions of this chapter in accord with chapter 34.04 RCW, as now or hereafter amended. The director may, however, within thirty days of the publication of the adoption of any such regulation under the federal egg products inspection act, give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be in accord with the requirements of chapter 34.04 RCW, as now or hereafter amended.

The director, in addition to the foregoing, may adopt any rule and regulation necessary to carry out the purpose and provisions of this chapter. [1975 1st ex.s. c 201 § 4.]

69.25.040 Application of administrative procedure act. The adoption, amendment, modification, or revocation of any rules or regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued or denied under the provisions of this chapter, shall be subject to the applicable provisions of chapter 34.04 RCW, the administrative procedure act, as now or hereafter amended. [1975 1st ex.s. c 201 § 5.]

69.25.050 Egg handler's or dealer's license and number—**Application, fee, posting required, procedure.** No person shall act as an egg handler or dealer without first obtaining an annual license and permanent dealer's number from the department; such license shall expire on the thirtieth day of June following issuance. Application for a license shall be on a form prescribed by the director and accompanied by a ten dollar annual license fee. Duplicate copies of the license may be issued upon payment of five dollars. A copy of said license shall be posted at each location where such licensee operates. Such application shall include the full name of the applicant for the license and the location of each facility he intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant and any other necessary information prescribed by the director. Upon the approval of the application and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof. Such license and permanent egg handler or dealer's number shall be nontransferable. [1975 1st ex.s. c 201 § 6.]

69.25.060 Egg handler's or dealer's license—Late renewal fee—Exceptions. If the application for the renewal of an egg handler's or dealer's license is not filed before July 1st of any year, an additional fee of five dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such additional fee shall not be charged if the applicant furnishes an affidavit certifying that he has not acted as an egg handler or dealer subsequent to the expiration of his license. [1975 1st ex.s. c 201 § 7.]

69.25.070 Egg handler's or dealer's license—Denial, suspension, revocation, or conditional issuance. The department may deny, suspend, revoke, or issue a license or a conditional license if it determines that an applicant or licensee has committed any of the following acts:

(1) That the applicant or licensee is violating or has violated any of the provisions of this chapter or rules and regulations adopted thereunder.

(2) That the application contains any materially false or misleading statement or involves any misrepresentation by any officer, agent, or employee of the applicant.

(3) That the applicant or licensee has concealed or withheld any facts regarding any violation of this chapter by any officer, agent, or employee of the applicant or licensee. [1975 1st ex.s. c 201 § 8.]

69.25.080 Continuous inspection at processing plants—Exemptions—Condemnation and destruction of adulterated eggs and egg products—Reprocessing—Appeal—Inspections of egg handlers. (1) For the purpose of preventing the entry into or movement in intrastate commerce of any egg product which is capable of use as human food and is misbranded or adulterated, the director shall, whenever processing operations are being conducted, unless under inspection by the United States department of agriculture, cause continuous inspection to be made, in accordance with the regulations promulgated under this chapter, of the processing of egg products, in each plant processing egg products for commerce, unless exempted under RCW 69.25.170. Without restricting the application of the preceding sentence to other kinds of establishments within its provisions, any food manufacturing establishment, institution, or restaurant which uses any eggs that do not meet the requirements of RCW 69.25.170(1)(a) in the preparation of any articles for human food, shall be deemed to be a plant processing egg products, with respect to such operations.

(2) The director, at any time, shall cause such retention, segregation, and reinspection as he deems necessary of eggs and egg products capable of use as human food in each official plant.

(3) Eggs and egg products found to be adulterated at official plants shall be condemned, and if no appeal be taken from such determination or condemnation, such articles shall be destroyed for human food purposes under the supervision of an inspector: *Provided*, That

articles which may by reprocessing be made not adulterated need not be condemned and destroyed if so reprocessed under the supervision of an inspector and thereafter found to be not adulterated. If an appeal be taken from such determination, the eggs or egg products shall be appropriately marked and segregated pending completion of an appeal inspection, which appeal shall be at the cost of the appellant if the director determines that the appeal is frivolous. If the determination of condemnation is sustained, the eggs or egg products shall be destroyed for human food purposes under the supervision of an inspector.

(4) The director shall cause such other inspections to be made of the business premises, facilities, inventory, operations, and records of egg handlers, and the records and inventory of other persons required to keep records under RCW 69.25.140, as he deems appropriate (and in the case of shell egg packers, packing eggs for the ultimate consumer, at least once each calendar quarter) to assure that only eggs fit for human food are used for such purpose, and otherwise to assure compliance by egg handlers and other persons with the requirements of RCW 69.25.140, except that the director shall cause such inspections to be made as he deems appropriate to assure compliance with such requirements at food manufacturing establishments, institutions, and restaurants, other than plants processing egg products. Representatives of the director shall be afforded access to all such places of business for purposes of making the inspections provided for in this chapter. [1975 1st ex.s. c 201 § 9.]

69.25.090 Sanitary operation of official plants—Inspection refused if requirements not met. (1) The operator of each official plant shall operate such plant in accordance with such sanitary practices and shall have such premises, facilities, and equipment as are required by regulations promulgated by the director to effectuate the purposes of this chapter, including requirements for segregation and disposition of restricted eggs.

(2) The director shall refuse to render inspection to any plant whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section. [1975 1st ex.s. c 201 § 10.]

69.25.100 Egg products—Pasteurization—Labeling requirements—False or misleading labels or containers—Director may order use of withheld—Hearing, determination, and appeal. (1) Egg products inspected at any official plant under the authority of this chapter and found to be not adulterated shall be pasteurized before they leave the official plant, except as otherwise permitted by regulations of the director, and shall at the time they leave the official plant, bear in distinctly legible form on their shipping containers or immediate containers, or both, when required by regulations of the director, the official inspection legend and official plant number, of the plant where the products were processed, and such other information as the director may require by regulations to describe the products adequately and to assure that they will not have false or misleading labeling.

(2) No labeling or container shall be used for egg products at official plants if it is false or misleading or has not been approved as required by the regulations of the director. If the director has reason to believe that any labeling or the size or form of any container in use or proposed for use with respect to egg products at any official plant is false or misleading in any particular, he may direct that such use be withheld unless the labeling or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the labeling or container does not accept the determination of the director, such person may request a hearing, but the use of the labeling or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person adversely affected thereby appeals to the superior court in the county in which such person has its principal place of business. [1975 1st ex.s. c 201 § 11.]

69.25.110 Prohibited acts and practices. (1) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in any business in intrastate commerce any restricted eggs, capable of use as human food, except as authorized by regulations of the director under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(2) No egg handler shall possess with intent to use, or use, any restricted eggs in the preparation of human food for intrastate commerce except that such eggs may be so possessed and used when authorized by regulations of the director under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(3) No person shall process any egg products for intrastate commerce at any plant except in compliance with the requirements of this chapter.

(4) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in intrastate commerce any egg products required to be inspected under this chapter unless they have been so inspected and are labeled and packaged in accordance with the requirements of RCW 69.25.100.

(5) No operator of any official plant shall allow any egg products to be moved from such plant if they are adulterated or misbranded and capable of use as human food.

(6) No person shall:

(a) Manufacture, cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the director;

(b) Forge or alter any official device, mark, or certificate;

(c) Without authorization from the director, use any official device, mark, or certificate, or simulation thereof, or detach, deface, or destroy any official device or mark; or use any labeling or container ordered to be withheld

from use under RCW 69.25.100 after final judicial affirmation of such order or expiration of the time for appeal if no appeal is taken under said section;

(d) Contrary to the regulations prescribed by the director, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(e) Knowingly possess, without promptly notifying the director or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label, or any eggs or egg products bearing any counterfeit, simulated, forged, or improperly altered official mark;

(f) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the director;

(g) Knowingly represent that any article has been inspected or exempted, under this chapter when in fact it has not been so inspected or exempted; and

(h) Refuse access, at any reasonable time, to any representative of the director, to any plant or other place of business subject to inspection under any provisions of this chapter.

(7) No person, while an official or employee of the state or local governmental agency, or thereafter, shall use to his own advantage, or reveal other than to the authorized representatives of the United States government or the state in their official capacity, or as ordered by a court in a judicial proceeding, any information acquired under the authority of this chapter concerning any matter which the originator or relator of such information claims to be entitled to protection as a trade secret. [1975 1st ex.s. c 201 § 12.]

69.25.120 Director to cooperate with other agencies—May conduct examinations. The director shall, whenever he determines that it would effectuate the purposes of this chapter, cooperate with any state, federal or other governmental agencies in carrying out any provisions of this chapter. In carrying out the provisions of this chapter, the director may conduct such examinations, investigations, and inspections as he determines practicable through any officer or employee of any such agency commissioned by him for such purpose. [1975 1st ex.s. c 201 § 13.]

69.25.130 Eggs or egg products not intended for use as human food—Identification or denaturing required. Inspection shall not be provided under this chapter at any plant for the processing of any egg products which are not intended for use as human food, but such articles, prior to their offer for sale or transportation in intrastate commerce, shall be denatured or identified as prescribed by regulations of the director to deter their use for human food. No person shall buy, sell, or transport or offer to buy or sell, or offer or receive for transportation, in intrastate commerce, any restricted eggs or egg products which are not intended for use as human food unless they are denatured or identified as required by the regulations of the director. [1975 1st ex.s. c 201 § 14.]

69.25.140 Records required, access to and copying of. For the purpose of enforcing the provisions of this chapter and the regulations promulgated thereunder, all persons engaged in the business of transporting, shipping, or receiving any eggs or egg products in intrastate commerce or in interstate commerce, or holding such articles so received, and all egg handlers, shall maintain such records showing, for such time and in such form and manner, as the director may prescribe, to the extent that they are concerned therewith, the receipt, delivery, sale, movement, and disposition of all eggs and egg products handled by them, and shall, upon the request of the director, permit him at reasonable times to have access to and to copy all such records. [1975 1st ex.s. c 201 § 15.]

69.25.150 Penalties—Liability of employer—Defense—Interference with person performing official duties. (1) Any person who commits any offense prohibited by RCW 69.25.110 shall upon conviction be guilty of a gross misdemeanor. When construing or enforcing the provisions of RCW 69.25.110, the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of his employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(2) No carrier or warehouseman shall be subject to the penalties of this chapter, other than the penalties for violation of RCW 69.25.140, or subsection (3) of this section, by reason of his receipt, carriage, holding, or delivery, in the usual course of business, as a carrier or warehouseman of eggs or egg products owned by another person unless the carrier or warehouseman has knowledge, or is in possession of facts which would cause a reasonable person to believe that such eggs or egg products were not eligible for transportation under, or were otherwise in violation of, this chapter, or unless the carrier or warehouseman refuses to furnish on request of a representative of the director the name and address of the person from whom he received such eggs or egg products and copies of all documents, if there be any, pertaining to the delivery of the eggs or egg products to, or by, such carrier or warehouseman.

(3) Notwithstanding any other provision of law any person who forcibly assaults, resists, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this chapter shall be punished by a fine of not more than five thousand dollars or imprisonment in the state penitentiary for not more than three years, or both. Whoever, in the commission of any such act, uses a deadly or dangerous weapon, shall be punished by a fine of not more than ten thousand dollars or by imprisonment in the state penitentiary for not more than ten years, or both. [1975 1st ex.s. c 201 § 16.]

69.25.160 Notice of violation—May take place of prosecution. Before any violation of this chapter, other than RCW 69.25.150(3), is reported by the director to any prosecuting attorney for institution of a criminal

proceeding, the person against whom such proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his views orally or in writing with regard to such contemplated proceeding. Nothing in this chapter shall be construed as requiring the director to report for criminal prosecution violation of this chapter whenever he believes that the public interest will be adequately served and compliance with this chapter obtained by a suitable written notice of warning. [1975 1st ex.s. c 201 § 17.]

69.25.170 Exemptions permitted by rule of director.

(1) The director may, by regulation and under such conditions and procedures as he may prescribe, exempt from specific provisions of this chapter:

(a) The sale, transportation, possession, or use of eggs which contain no more restricted eggs than are allowed by the tolerance in the official state standards for consumer grades for shell eggs;

(b) The processing of egg products at any plant where the facilities and operating procedures meet such sanitary standards as may be prescribed by the director, and where the eggs received or used in the manufacture of egg products contain no more restricted eggs than are allowed by the official standards of the state consumer grades for shell eggs, and the egg products processed at such plant;

(c) The sale of eggs by any poultry producer from his own flocks directly to a household consumer exclusively for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this subsection;

(d) The sale of eggs by shell egg packers on his own premises directly to household consumers for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this subsection.

(2) The director may modify or revoke any regulation granting exemption under this chapter whenever he deems such action appropriate to effectuate the purposes of this chapter. [1975 1st ex.s. c 201 § 18.]

69.25.180 Limiting entry of eggs and egg products into official plants. The director may limit the entry of eggs and egg products and other materials into official plants under such conditions as he may prescribe to assure that allowing the entry of such articles into such plants will be consistent with the purposes of this chapter. [1975 1st ex.s. c 201 § 19.]

69.25.190 Embargo of eggs or egg products in violation of this chapter—Time limit—Removal of official marks. Whenever any eggs or egg products subject to this chapter are found by any authorized representative of the director upon any premises and there is reason to believe that they are or have been processed, bought, sold, possessed, used, transported, or offered or received for sale or transportation in violation of this chapter, or that they are in any other way in violation of this chapter, or whenever any restricted eggs capable of

use as human food are found by such a representative in the possession of any person not authorized to acquire such eggs under the regulations of the director, such articles may be embargoed by such representative for a reasonable period but not to exceed twenty days, pending action under RCW 69.25.200 or notification of any federal or other governmental authorities having jurisdiction over such articles, and shall not be moved by any person from the place at which they are located when so detained until released by such representative. All official marks may be required by such representative to be removed from such articles before they are released unless it appears to the satisfaction of the director that the articles are eligible to retain such marks. [1975 1st ex.s. c 201 § 20.]

69.25.200 Embargo—Petition for court order affirming—Removal of embargo or destruction or correction and release—Court costs, fees, administrative expenses—Bond may be required. When the director has embargoed any eggs or egg products, he shall petition the superior court of the county in which the eggs or egg products are located for an order affirming such embargo. Such court shall have jurisdiction for cause shown and after a prompt hearing to any claimant of eggs or egg products, shall issue an order which directs the removal of such embargo or the destruction or correction and release of such eggs and egg products. An order for destruction or the correction and release of such eggs and egg products shall contain such provision for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provisions for a bond as the court finds indicated in the circumstance. [1975 1st ex.s. c 201 § 21.]

69.25.210 Embargo—Order affirming not required, when. The director need not petition the superior court as provided for in RCW 69.25.200 if the owner or claimant of such eggs or egg products agrees in writing to the disposition of such eggs or egg products as the director may order. [1975 1st ex.s. c 201 § 22.]

69.25.220 Embargo—Consolidation of petitions. Two or more petitions under RCW 69.25.200 which pend at the same time and which present the same issue and claimant hereunder may be consolidated for simultaneous determination by one court of competent jurisdiction, upon application to any court of jurisdiction by the director or claimant. [1975 1st ex.s. c 201 § 23.]

69.25.230 Embargo—Sampling of article. The claimant in any proceeding by petition under RCW 69.25.200 shall be entitled to receive a representative sample of the article subject to such proceedings upon application to the court of competent jurisdiction made at any time after such petition and prior to the hearing thereon. [1975 1st ex.s. c 201 § 24.]

69.25.240 Condemnation—Recovery of damages restricted. No state court shall allow the recovery of

damages for administrative action for condemnation under the provisions of this chapter, if the court finds that there was probable cause for such action. [1975 1st ex.s. c 201 § 25.]

69.25.250 Assessment—Rate, applicability, time of payment—Reports—Contents, frequency. There is hereby levied an assessment not to exceed two and one-half mills per dozen eggs entering intrastate commerce, as prescribed by rules and regulations issued by the director. Such assessment shall be applicable to all eggs entering intrastate commerce except as provided in RCW 69.25.170 and 69.25.290. Such assessment shall be paid to the director on a monthly basis on or before the tenth day following the month such eggs enter intrastate commerce. The director may require reports by egg handlers or dealers along with the payment of the assessment fee. Such reports may include any and all pertinent information necessary to carry out the purposes of this chapter. The director may, by regulations, require egg container manufacturers to report on a monthly basis all egg containers sold to any egg handler or dealer and bearing such egg handler or dealer's license number. [1975 1st ex.s. c 201 § 26.]

69.25.260 Assessment—Prepayment by purchase of egg seals—Permit for printing seal on containers. Any egg handler or dealer may prepay the assessment provided for in RCW 69.25.250 by purchasing Washington state egg seals from the director to be placed on egg containers showing that the proper assessment has been paid. Any carton manufacturer may apply to the director for a permit to place reasonable facsimiles of the Washington state egg seals to be imprinted on egg containers. The director shall, from time to time, prescribe rules and regulations governing the affixing of seals and he is authorized to cancel any such permit issued pursuant to this chapter, whenever he finds that a violation of the terms under which the permit has been granted has been violated. [1975 1st ex.s. c 201 § 27.]

69.25.270 Assessment—Monthly payment—Audit—Failure to pay, penalty. Every egg handler or dealer who pays assessments required under the provisions of this chapter on a monthly basis in lieu of seals shall be subject to audit by the director on an annual basis or more frequently if necessary. The cost to the director for performing such audit shall be chargeable to and payable by the egg handler or dealer subject to audit. Failure to pay assessments when due or refusal to pay for audit costs may be cause for a summary suspension of an egg handler's or dealer's license and a charge of one percent per month, or fraction thereof shall be added to the sum due the director, for each remittance not received by the director when due. The conditions and charges applicable to egg handlers and dealers set forth herein shall also be applicable to payments due the director for facsimiles of seals placed on egg containers. [1975 1st ex.s. c 201 § 28.]

69.25.280 Assessment—Use of proceeds. The proceeds from assessment fees paid to the director shall be retained for the inspection of eggs and carrying out the provisions of this chapter relating to eggs. [1975 1st ex.s. c 201 § 29.]

69.25.290 Assessment—Exclusions. The assessments provided in this chapter shall not apply to:

- (1) Sale and shipment to points outside of this state;
- (2) Sale to the United States government and its instrumentalities;
- (3) Sale to breaking plants for processing into egg products;
- (4) Sale between egg dealers. [1975 1st ex.s. c 201 § 30.]

69.25.300 Transfer of moneys in state egg account. All moneys in the state egg account, created by RCW 69.24.450, at the time of July 1, 1975, shall be transferred to the director and shall be retained and expended for administering and carrying out the purposes of this chapter. [1975 1st ex.s. c 201 § 31.]

69.25.310 Containers—Marking required—Obliteration of previous markings required for reuse—Penalty. All containers used by an egg handler or dealer to package eggs shall bear the name and address or the permanent number issued by the director to said egg handler or dealer. Such permanent number shall be displayed in a size and location prescribed by the director. It shall constitute a gross misdemeanor for any egg handler or dealer to reuse a container which bears the permanent number of another egg handler or dealer unless such number is totally obliterated prior to reuse. The director may in addition require the obliteration of any or all markings that may be on any container which will be reused for eggs by an egg handler or dealer. [1975 1st ex.s. c 201, § 32.]

69.25.320 Records required, additional—Sales to retailer or food service—Exception—Defense to charged violation—Sale of eggs deteriorated due to storage time. In addition to any other records required to be kept and furnished the director under the provisions of this chapter, the director may require any person who sells to any retailer, or to any restaurant, hotel, boarding house, bakery, or any institution or concern which purchases eggs for serving to guests or patrons thereof or for its use in preparation of any food product for human consumption, candled or graded eggs other than those of his own production sold and delivered on the premises where produced, to furnish that retailer or other purchaser with an invoice covering each such sale, showing the exact grade or quality, and the size or weight of the eggs sold, according to the standards prescribed by the director, together with the name and address of the person by whom the eggs were sold. The person selling and the retailer or other purchaser shall keep a copy of said invoice on file at his place of business for a period of thirty days, during which time the copy shall be available for inspection at all reasonable times by the director: *Provided*, That no retailer or other purchaser shall

be guilty of a violation of this chapter if he can establish a guarantee from the person from whom the eggs were purchased to the effect that they, at the time of purchase, conformed to the information required by the director on such invoice: *Provided further*, That if the retailer or other purchaser having labeled any such eggs in accordance with the invoice keeps them for such a time after they are purchased as to cause them to deteriorate to a lower grade or standard, and sells them under the label of the invoice grade or standard, he shall be guilty of a violation of this chapter.

No invoice shall be required on eggs when packed for sale to the United States department of defense, or a component thereof, if labeled with grades promulgated by the United States secretary of agriculture. [1975 1st ex.s. c 201 § 33.]

69.25.330 Exemption from chapter. The provisions of this chapter shall not apply to the sale of eggs by any egg producer with an annual egg production from a flock of three thousand or less hens. [1975 1st ex.s. c 201 § 34.]

69.25.340 General penalty. Any person violating any provision of this chapter or regulations for which a penalty is not specifically provided for in this chapter, shall be guilty of a misdemeanor and guilty of a gross misdemeanor for any subsequent violation: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1975 1st ex.s. c 201 § 36.]

69.25.900 Savings. The enactment of this chapter shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which shall already be in existence on July 1, 1975. [1975 1st ex.s. c 201 § 35.]

69.25.910 Chapter is cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy at law. [1975 1st ex.s. c 201 § 37.]

69.25.920 Severability—1975 1st ex.s. c 201. 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. [1975 1st ex.s. c 201 § 38.]

69.25.930 Short title. This act may be known and cited as the "Washington wholesome eggs and egg products act". [1975 1st ex.s. c 201 § 39.]

Chapter 69.28 HONEY

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Agricultural cooperative associations: Chapter 24.32 RCW.

Bees and apiaries: Chapter 15.60 RCW.

Bees as a personal exemption: RCW 6.16.020.

Commission merchants, agricultural products: Title 20 RCW.

69.28.020 Enforcement power and duty of director and agents. The director is hereby empowered, through his duly authorized agents, to enforce all provisions of this chapter. The director shall have the power to define, promulgate and enforce such reasonable regulations as he may deem necessary in carrying out the provisions of this chapter. [1939 c 199 § 29; RRS § 6163-29. FORMER PART OF SECTION: 1939 c 199 § 44 now codified as RCW 69.28.025.]

69.28.025 Rules and regulations have force of law. Any rules or regulations promulgated and published by the director under the provisions of this chapter shall have the force and effect of law. [1939 c 199 § 44; RRS § 6163-44. Formerly RCW 69.28.020, part.]

69.28.030 Rules prescribing standards. The director is hereby authorized, and it shall be his duty, upon the taking effect of this chapter and from time to time thereafter, to adopt, establish and promulgate reasonable rules and regulations specifying grades or standards of quality governing the sale of honey: *Provided*, That, in the interest of uniformity, such grades and standards of quality shall conform as nearly to those established by the United States department of agriculture as local conditions will permit. [1939 c 199 § 24; RRS § 6163-24.]

69.28.040 Right to enter, inspect, and take samples. The director or any of his duly authorized agents shall have the power to enter and inspect at reasonable times every place, vehicle, plant or other place where honey is being produced, stored, packed, transported, exposed, or offered for sale, and to inspect all such honey and the containers thereof and to take for inspection such samples of said honey as may be necessary. [1939 c 199 § 28; RRS § 6163-28.]

69.28.050 Containers to be labeled. It shall be unlawful to deliver for shipment, ship, transport, sell, expose or offer for sale any containers or subcontainers of honey within this state unless they shall be conspicuously marked with the name and address of the producer or distributor, the net weight of the honey, the grade of the honey, and, if imported from any foreign country, the name of the country or territory from which the said honey was imported, or if a blend of honey, any part of which is foreign honey, the container must be labeled with the name of the country or territory where such honey was produced and the proportion of each foreign honey used in the blend. [1939 c 199 § 32; RRS § 6163-32.]

69.28.060 Requisites of markings. When any markings are used or required to be used under this chapter on any container of honey to identify the container or describe the contents thereof, such markings must be plainly and conspicuously marked, stamped, stenciled, printed, labeled or branded in the English language, in letters large enough to be discernible by any person, on the front, side or top of any container. [1939 c 199 § 35; RRS § 6163-35.]

69.28.070 "Marked" defined—When honey need not be marked. The term "marked" shall mean printed in the English language on the top, front or side of any container containing honey: *Provided*, That it shall not be necessary to mark honey sold by the producer thereof to any distributor, packer or manufacturer with the net weight, color or grade if the honey is to be used in the manufacture of honey products or is to be graded and packaged by the distributor or packer for resale. [1939 c 199 § 21; RRS § 6163-21.]

69.28.080 Purchaser to be advised of standards—Exceptions. It shall be unlawful for any person to deliver, sell, offer, or expose for sale any honey for human consumption within the state without notifying

the person or persons purchasing or intending to purchase the same, of the exact grade or quality of such honey, according to the standards prescribed by the director, by stamping or printing on the container of any such honey such grade or quality: *Provided*, This section shall not apply to honey while it is in transit in intrastate commerce from one establishment to the other, to be processed, labeled, or repacked. [1961 c 60 § 1; 1957 c 103 § 1; 1949 c 105 § 6; 1939 c 199 § 39; Rem. Supp. 1949 § 6163-39.]

69.28.090 Forgery, simulation, etc., of marks, labels, etc., unlawful. It shall be unlawful to forge, counterfeit, simulate, falsely represent or alter without proper authority any mark, stamp, tab, label, seal, sticker or other identification device provided by this chapter. [1961 c 60 § 2; 1939 c 199 § 40; RRS § 6163-40. FORMER PART OF SECTION: 1939 c 199 § 41 now codified as RCW 69.28.095.]

69.28.095 Unlawful mutilation or removal of seals, marks, etc., used by director. It shall be unlawful to mutilate, destroy, obliterate, or remove without proper authority, any mark, stamp, tag, label, seal, sticker or other identification device used by the director under the provisions of this chapter. [1939 c 199 § 41; RRS § 6163-41. Formerly RCW 69.28.090, part.]

69.28.100 Marks for "slack-filled" container. Any slack-filled container shall be conspicuously marked "slack-filled". [1939 c 199 § 36; RRS § 6163-36. FORMER PART OF SECTION: 1939 c 199 § 10 now codified as RCW 69.28.270.]

69.28.110 Use of used containers. It shall be unlawful to sell, offer, or expose for sale to the consumer any honey in any second-hand or used containers which formerly contained honey, unless all markings as to grade, name and weight have been obliterated, removed or erased. [1939 c 199 § 37; RRS § 6163-37.]

69.28.120 Floral source labels. Any honey which is a blend of two or more floral types of honey shall not be labeled as a honey product from any one particular floral source alone. [1939 c 199 § 34; RRS § 6163-34.]

69.28.130 Adulterated honey—Sale or offer unlawful. It shall be unlawful for any person to sell, offer or intend for sale any adulterated honey as honey. [1939 c 199 § 26; RRS § 6163-26. FORMER PART OF SECTION: 1939 c 199 §§ 27 and 33 now codified as RCW 69.28.133 and 69.28.135.]

69.28.133 Nonconforming honey—Sale or offer unlawful. It shall be unlawful for any person to sell, offer or intend for sale any honey which does not conform to the provisions of this chapter or any regulation promulgated by the director under this chapter. [1939 c 199 § 27; RRS § 6163-27. Formerly RCW 69.28.130, part.]

69.28.135 Warning-tagged honey—Movement prohibited. It shall be unlawful to move any honey or containers of honey to which any warning tag or notice

has been affixed except under authority from the director. [1939 c 199 § 33; RRS § 6163-33. Formerly RCW 69.28.130, part.]

69.28.140 Possession of unlawful honey as evidence. Possession by any person, of any honey which is sold, exposed or offered for sale in violation of this chapter shall be prima facie evidence that the same is kept or shipped to the said person, in violation of the provisions of this chapter. [1939 c 199 § 30; RRS § 6163-30.]

69.28.170 Inspectors—Prosecutions. It shall be the duty of the director to enforce this chapter and to appoint and employment [employ] such inspectors as may be necessary therefor. The director shall notify the prosecuting attorneys for the counties of the state of violations of this chapter occurring in their respective counties, and it shall be the duty of the respective prosecuting attorneys immediately to institute and prosecute proceeding in their respective counties and to enforce the penalties provided for by this chapter. [1939 c 199 § 43; RRS § 6163-43.]

69.28.180 Violation of rules and regulations unlawful. It shall be unlawful for any person to violate any rule or regulation promulgated by the director under the provisions of this chapter. [1939 c 199 § 25; RRS § 6163-25. FORMER PART OF SECTION: 1939 c 199 § 44 now codified in RCW 69.28.185.]

69.28.185 Penalty. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor, and upon violation thereof shall be punishable by a fine of not more than five hundred dollars or imprisonment in the county jail for a period of not more than six months or by both such fine and imprisonment. [1939 c 199 § 42; RRS § 6163-42. Formerly RCW 69.28.180, part.]

69.28.190 "Director" defined. The term "director" means the director of agriculture of the state of Washington or his duly authorized representative. [1939 c 199 § 2; RRS § 6163-2. Formerly RCW 69.28.010, part.]

69.28.200 "Container" defined. The term "container" shall mean any box, crate, chest, carton, barrel, keg, bottle, jar, can or any other receptacle containing honey. [1939 c 199 § 3; RRS § 6163-3.]

69.28.210 "Subcontainer" defined. The term "subcontainer" shall mean any section box or other receptacle used within a container. [1939 c 199 § 4; RRS § 6163-4.]

69.28.220 "Section box" defined. The term "section box" shall mean the wood or other frame in which bees have built a small comb of honey. [1939 c 199 § 5; RRS § 6163-5.]

69.28.230 "Clean and sound containers" defined. The term "clean and sound containers" shall mean containers

which are virtually free from rust, stains or leaks. [1939 c 199 § 6; RRS § 6163-6.]

69.28.240 "Pack", "packing", or "packed" defined. The term "pack", "packing", or "packed" shall mean the arrangement of all or part of the subcontainers in any container. [1939 c 199 § 7; RRS § 6163-7.]

69.28.250 "Label" defined. The term "label" shall mean a display of written, printed or graphic matter upon the immediate container of any article. [1939 c 199 § 8; RRS § 6163-8.]

69.28.260 "Person" defined. The term "person" includes individual, partnership, corporation and/or association. [1939 c 199 § 9; RRS § 6163-9.]

69.28.270 "Slack-filled" defined. The term "slack-filled" shall mean that the contents of any container occupy less than ninety-five percent of the volume of the closed container. [1939 c 199 § 10; RRS § 6163-10. Formerly RCW 69.28.100, part.]

69.28.280 "Deceptive arrangement" defined. The term "deceptive arrangement" shall mean any lot or load, arrangement or display of honey which has in any exposed surface, honey which is so superior in quality, appearance or condition, or in any other respects, to any of that which is concealed or unexposed as to materially misrepresent any part of the lot, load, arrangement or display. [1939 c 199 § 11; RRS § 6163-11.]

69.28.290 "Mislabeled" defined. The term "mislabeled" shall mean the placing or presence of any false or misleading statement, design or device upon, or in connection with, any container or lot of honey, or upon the label, lining or wrapper of any such container, or any placard used in connection therewith, and having reference to such honey. A statement, design or device is false and misleading when the honey to which it refers does not conform in every respect to such statement. [1939 c 199 § 12; RRS § 6163-12.]

69.28.300 "Placard" defined. The term "placard" means any sign, label or designation, other than an oral designation, used with any honey as a description or identification thereof. [1939 c 199 § 13; RRS § 6163-13.]

69.28.310 "Honey" defined. The term "honey" as used herein is the nectar of floral exudations of plants, gathered and stored in the comb by honey bees (*apis mellifica*). It is laevo-rotatory, contains not more than twenty-five percent of water, not more than twenty-five one-hundredths of one percent of ash, not more than eight percent of sucrose, its specific gravity is 1.412, its weight not less than eleven pounds twelve ounces per standard gallon of 231 cubic inches at sixty-eight degrees Fahrenheit. [1939 c 199 § 14; RRS § 6163-14. Formerly RCW 69.28.010, part.]

69.28.320 "Comb-honey" defined. The term "comb-honey" means honey which has not been extracted from the comb. [1939 c 199 § 15; RRS § 6163-15.]

69.28.330 "Extracted honey" defined. The term "extracted honey" means honey which has been removed from the comb. [1939 c 199 § 16; RRS § 6163-16.]

69.28.340 "Crystallized honey" defined. The term "crystallized honey" means honey which has assumed a solid form due to the crystallization of one or more of the natural sugars therein. [1939 c 199 § 17; RRS § 6163-17.]

69.28.350 "Honeydew" defined. The term "honeydew" is the saccharine exudation of plants, other than nectarous exudations, gathered and stored in the comb by honey bees (*apis mellifica*) and is dextrorotatory. [1939 c 199 § 18; RRS § 6163-18. Formerly RCW 69.28.010, part.]

69.28.360 "Foreign material" defined. The term "foreign material" means pollen, wax particles, insects, or materials not deposited by bees. [1937 c 199 § 19; RRS § 6163-19.]

69.28.370 "Foreign honey" defined. The term "foreign honey" means any honey not produced within the continental United States. [1939 c 199 § 20; RRS § 6163-20.]

69.28.380 "Adulterated honey" defined. The term "adulterated honey" means any honey to which has been added honeydew, glucose, dextrose, molasses, sugar, sugar syrup, invert sugar, or any other similar product or products, other than the nectar of floral exudations of plants gathered and stored in the comb by honey bees. [1939 c 199 § 22; RRS § 6163-22. Formerly RCW 69.28.010, part.]

69.28.390 "Serious damage" defined. The term "serious damage" means any injury or defect that seriously affects the edibility or shipping quality of the honey. [1939 c 199 § 23; RRS § 6163-23.]

69.28.400 Labeling requirements for artificial honey or mixtures containing honey. (1) No person shall sell, keep for sale, expose or offer for sale, any article or product in imitation or semblance of honey branded exclusively as "honey", "liquid or extracted honey", "strained honey" or "pure honey".

(2) No person, firm, association, company or corporation shall manufacture, sell, expose or offer for sale, any compound or mixture branded or labeled exclusively as honey which shall be made up of honey mixed with any other substance or ingredient.

(3) Whenever honey is mixed with any other substance or ingredient and the commodity is to be marketed in imitation or semblance of honey, the product shall be labeled with the word "artificial" or "imitation" in the same type size and style as the word "honey";

(4) Whenever any substance or commodity is to be marketed in imitation or semblance of honey, but contains no honey, the product shall not be branded or labeled with the word "honey" and/or depict thereon a picture or drawing of a bee, bee hive, or honeycomb;

(5) Whenever honey is mixed with any other substance or ingredient and the commodity is to be marketed, there shall be printed on the package containing such compound or mixture a statement giving the ingredients of which it is made; if honey is one of such ingredients it shall be so stated in the same size type as are the other ingredients; nor shall such compound or mixture be branded or labeled exclusively with the word "honey" in any form other than as herein provided; nor shall any product in semblance of honey, whether a mixture or not, be sold, exposed or offered for sale as honey, or branded or labeled exclusively with the word "honey", unless such article is pure honey. [1975 1st ex.s. c 283 § 1.]

69.28.410 Embargo on honey or product—Notice by director—Removal. Whenever the director shall find, or shall have probable cause to believe, that any honey or product subject to the provisions of this chapter, as now or hereafter amended, is in intrastate commerce, which was introduced into such intrastate commerce in violation of the provisions of this chapter, as now or hereafter amended, he is hereby authorized to affix to such honey or product a notice placing an embargo on such honey or product, and prohibiting its sale in intrastate commerce, and no person shall move or sell such honey or product without first receiving permission from the director to move or sell such honey or product. But if, after such honey or product has been embargoed, the director shall find that such honey or product does not involve a violation of this chapter, as now or hereafter amended, such embargo shall be forthwith removed. [1975 1st ex.s. c 283 § 3.]

69.28.420 Embargo on honey or product—Court order affirming, required—Order for destruction or correction and release—Bond. When the director has embargoed any honey or product he shall, no later than twenty days after the affixing of notice of its embargo, petition the superior court for an order affirming such embargo. Such court shall then have jurisdiction, for cause shown and after prompt hearing to any claimant of such honey or product, to issue an order which directs the removal of such embargo or the destruction or the correction and release of such honey or product. An order for destruction or correction and release shall contain such provision for the payment of pertinent court costs and fees and administrative expenses, as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provision for bond, as the court finds indicated in the circumstances. [1975 1st ex.s. c 283 § 4.]

69.28.430 Consolidation of petitions presenting same issue and claimant. Two or more petitions under this chapter, as now or hereafter amended, which pend at the

same time and which present the same issue and claimant hereunder, shall be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1975 1st ex.s. c 283 § 5.]

69.28.440 Sample of honey or product may be obtained—Procedure. The claimant in any proceeding by petition under this chapter, as now or hereafter amended, shall be entitled to receive a representative sample of the honey or product subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon. [1975 1st ex.s. c 283 § 6.]

69.28.450 Recovery of damages barred if probable cause for embargo. No state court shall allow the recovery of damages for embargo under this chapter, as now or hereafter amended, if the court finds that there was probable cause for such action. [1975 1st ex.s. c 283 § 7.]

69.28.900 Severability—1939 c 199. If any provisions of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provisions to other persons or circumstances, shall not be affected thereby. If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be unconstitutional, such decisions shall not affect the validity of the remaining portions of this chapter. The legislature hereby declares that it would have passed this chapter and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more of the other sections, subsections, sentences, clauses and phrases be declared unconstitutional. [1939 c 199 § 45; RRS § 6163-45.]

69.28.910 Short title. This chapter may be known and cited as the Washington state honey act. [1939 c 199 § 1; RRS § 6163-1.]

Chapter 69.30 SANITARY CONTROL OF SHELLFISH

Sections	
69.30.010	Definitions.
69.30.020	Certificate of compliance required for sale.
69.30.030	Rules and regulations—Duties of state board of health.
69.30.050	Certificates of approval—Shellfish growing areas.
69.30.060	Certificates of approval—Culling, shucking, packing establishments.
69.30.070	Certificates of approval—Compliance with other laws and rules required.
69.30.080	Certificates of approval—Denial or revocation—Procedure.
69.30.090	Certificates of approval—Appeal from director's decision.
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69.30.110	Sale in violation of chapter—Withdrawal—Enforcement.
69.30.120	Inspection by department.
69.30.130	Water pollution laws and rules applicable.
69.30.140	Penalties.
69.30.900	Severability—1955 c 144.

Shellfish: Chapter 75.24 RCW.

69.30.010 Definitions. When used in this chapter, the following terms shall have the following meanings:

(1) "Shellfish" means all varieties of fresh and frozen oysters and clams, either shucked or in the shell, and any fresh or frozen edible products thereof.

(2) "Sale" means to sell, offer for sale, barter, trade, deliver, consign, hold for sale, consignment, barter, trade, or delivery, and/or possess with intent to sell or dispose of in any commercial manner.

(3) "Shellfish growing areas" means the lands and waters in and upon which shellfish are grown for harvesting for sale for human consumption.

(4) "Establishment" means the buildings together with the necessary equipment and appurtenances used for the storage, culling, shucking, packing and/or shipping of shellfish for sale for human consumption.

(5) "Person" means any individual, partnership, firm, company, corporation and/or association.

(6) "Department" means the state department of health.

(7) "Director" means the state director of health or his authorized representatives. [1955 c 144 § 1.]

69.30.020 Certificate of compliance required for sale. Only shellfish bearing a certificate of compliance with the sanitary requirements of this state or a state, territory, province or country of origin whose requirements are equal or comparable to those established pursuant to this chapter may be sold or offered for sale in the state of Washington. [1955 c 144 § 2.]

69.30.030 Rules and regulations—Duties of state board of health. The state board of health shall cause such investigations to be made as are necessary to determine reasonable requirements governing the sanitation of shellfish growing areas and shellfish plant facilities and operations, in order to protect public health and carry out the provisions of this chapter; and shall adopt such requirements as rules and regulations of the state board of health. Such rules and regulations may include reasonable sanitary requirements relative to the quality of shellfish growing waters and areas, boat and barge sanitation, building construction, water supply, sewage and waste water disposal, lighting and ventilation, insect and rodent control, shell disposal, garbage and waste disposal, cleanliness of establishment, the handling, storage, construction and maintenance of equipment, the handling, storage and refrigeration of shellfish and the identification of containers. [1955 c 144 § 3.]

69.30.050 Certificates of approval—Shellfish growing areas. Shellfish growing areas, from which shellfish are removed for sale for human consumption shall be in a safe and sanitary condition, meeting the requirements of the state board of health; and such shellfish growing areas shall be so certified by the department. Any person desiring to remove shellfish for sale for human consumption from a growing area in the state of Washington shall first apply to the department for a certificate of approval of the growing area. The

department shall cause the shellfish growing area to be inspected and if the area meets the sanitary requirements of the state board of health, the department shall issue a certificate of approval for that area. Such certificates shall be issued for a period not to exceed twelve months and may be revoked at any time the area is found not to be in compliance with the sanitary requirements of the state board of health. [1955 c 144 § 5.]

69.30.060 Certificates of approval—Culling, shucking, packing establishments. No person shall cull, shuck, or pack shellfish in the state of Washington for sale for human consumption unless the establishment in which such operations are conducted has been certified by the department as meeting the requirements of the state board of health. Any person desiring to cull, shuck, or pack shellfish within the state of Washington for sale for human consumption, shall apply to the department for a certificate of approval for the establishment in which such operations will be done. The department shall cause such establishment to be inspected, and if the establishment meets the sanitary requirements of the state board of health, the department shall issue a certificate of approval. Such certificates of approval shall be issued for a period not to exceed twelve months, and may be revoked at any time the establishment or the operations are found not to be in compliance with the sanitary requirements of the state board of health. [1955 c 144 § 6.]

69.30.070 Certificates of approval—Compliance with other laws and rules required. Any certificate of approval issued under the provisions of this chapter shall not relieve any person from complying with the laws, rules and/or regulations of the state department of fisheries, relative to shellfish. [1955 c 144 § 7.]

69.30.080 Certificates of approval—Denial or revocation—Procedure. Any order issued by the department which denies or revokes a certificate of approval for a shellfish growing area or establishment shall be in writing and shall contain a statement of the grounds upon which said denial or revocation is based. A copy of the department's order shall be sent by registered mail to the person whose name appears on the certificate of approval or application therefor. Said order shall become final fifteen days after the date of mailing, provided the person aggrieved by such order does not, within ten days of the date of mailing of such order, apply in writing to the director for a fair hearing. Upon such application, the department shall fix a time for such hearing and shall give the person aggrieved a notice of the time fixed for such a hearing. The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the state board of health after consultation with the shellfish sanitation advisory committee. The director shall render his decision affirming, modifying or setting aside the order of the department which decision in the absence of an appeal therefrom as provided by this chapter, shall become final fifteen days after the date of mailing. [1955 c 144 § 8.]

69.30.090 Certificates of approval—Appeal from director's decision. Within ten days after the date of mailing of the decision of the director, the person aggrieved may appeal to the superior court of the county in which the shellfish growing area or establishment is located or to be located and such appeal shall be heard as a case in equity, but upon such appeal only such issues of law may be raised as were properly included in the hearings before the director. Proceedings of every such appeal shall be informal and summary, but full opportunity to be heard upon the issues of law shall be had before judgment is pronounced. Such appeal shall be perfected by serving a notice of appeal on the department and by filing the notice of appeal together with proof of service thereof with the clerk of the court. The service and filing, together with proof of service of the notice of appeal, all within ten days shall be jurisdictional. The department shall within ten days after receipt of such notice of appeal serve and file a notice of appearance upon appellant or his attorney of record and such appeal shall thereupon be deemed at issue. The department shall serve upon the appellant and file with the clerk of the court before hearing, a certified copy of the complete record of the administrative proceedings which shall, upon being so filed, become the record in such case. The cost of transcribing the record shall be borne by the appellant in the event the director's decision is affirmed by the court. In the event of modification or reversal, such cost shall be borne by the department. [1955 c 144 § 9.]

69.30.100 Certificates of approval—Decision effective during appeal. Any order or decision issued by the department or director from which an appeal is taken, as provided in this chapter, shall have full force and effect during the appellate procedure. [1955 c 144 § 10.]

69.30.110 Sale in violation of chapter—Withdrawal—Enforcement. Any shellfish sold or offered for sale in the state, which have not been grown, shucked, packed, or shipped in accordance with the provisions of this chapter, shall upon order of the director be immediately withdrawn from sale, use, or consumption. In the event of failure or refusal to comply with said order, the director may apply to the superior court of the county wherein the shellfish were found for an order directing that the person having control of said shellfish withdraw said shellfish from sale, use, or consumption, in compliance with the order of the director. [1955 c 144 § 11.]

69.30.120 Inspection by department. The department may enter and inspect at reasonable times any shellfish growing area or establishment and may inspect all shellfish, and take for inspection such samples of shellfish as may reasonably be necessary to carry out the provisions of this chapter. [1955 c 144 § 12.]

69.30.130 Water pollution laws and rules applicable. All existing laws and rules and regulations governing the pollution of waters of the state shall apply in the control

of pollution of shellfish growing areas. [1955 c 144 § 13.]

69.30.140 Penalties. Any person found violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars, or imprisonment not to exceed ninety days, or to both fine and imprisonment. Upon the violation of any of the provisions of this chapter, written notification shall be sent by the department to the person found in violation. Each day's operation thereafter in violation shall constitute a separate offense and shall be subject to the prescribed penalties. [1955 c 144 § 14.]

69.30.900 Severability—1955 c 144. If any provision of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions of the application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. [1955 c 144 § 15.]

Chapter 69.32 NARCOTICS—ADDICTION

Sections	
69.32.010	Definitions.
69.32.030	State University and State College may purchase drugs.
69.32.060	Exceptions and exemptions not required to be negated.
69.32.095	Program transferred to department of social and health services.
69.32.096	Drug control assistance unit investigative assistance for enforcement of chapter.
69.32.900	Continuation of existing law.
69.32.910	Chapter and section headings not part of law.
69.32.920	Invalidity of part of chapter not to affect remainder.
69.32.930	Repeals and saving.
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69.32.960	Chapter is cumulative.

Bringing narcotics into institution for care of mentally ill persons, etc., a felony: RCW 72.23.300.

Restrictions on minors entering places where narcotics used: RCW 26.28.080.

State narcotic farm colony: Chapter 72.48 RCW.

69.32.010 Definitions. The definitions contained in RCW 69.33.220 as now or hereafter amended shall also apply to this chapter.

The term "narcotic addict" means a person who habitually uses a narcotic drug or drugs. [1959 c 27 § 69.32.010. Prior: 1951 2nd ex.s. c 22 § 22; 1923 c 47 § 2, part; RRS § 2509-2, part.]

69.32.030 State University and State College may purchase drugs. Nothing herein shall make unlawful or prevent the purchase by *the State University and the State College of Washington or the proper departments thereof, of narcotic drugs and the use thereof for experimental purposes only, when purchased, owned, held, possessed and used in compliance with the acts of congress and the rules and regulations thereunder. [1959 c

27 § 69.32.030. Prior: 1951 2nd ex.s. c 22 § 23; 1923 c 47 § 3, part; RRS § 2509-3, part.]

*Reviser's note: Reference to "the State University and the State College of Washington" as used in RCW 69.32.030 refers to the University of Washington and Washington State University, the latter whose designation as Washington State College was changed in RCW 28.80.010 by chapter 77, Laws of 1959, effective September 1, 1959, to Washington State University.

69.32.060 Exceptions and exemptions not required to be negated. In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this chapter, and the burden of proof of any such exception, excuse, proviso, or exemption, shall be upon the defendant. [1959 c 27 § 69.32.060. Prior: 1951 2nd ex.s. c 22 § 18; 1923 c 47 § 5; RRS § 2509-5.]

69.32.095 Program transferred to department of social and health services. See RCW 43.20A.180.

69.32.096 Drug control assistance unit investigative assistance for enforcement of chapter. See RCW 43.43.610.

69.32.900 Continuation of existing law. The provisions of this chapter 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 27 § 69.32.900.]

69.32.910 Chapter and section headings not part of law. Chapter headings, and section or subsection headings, as used in this chapter do not constitute any part of the law. [1959 c 27 § 69.32.910.]

69.32.920 Invalidity of part of chapter not to affect remainder. 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. [1959 c 27 § 69.32.920.]

69.32.930 Repeals and saving. The following acts or parts of acts are repealed:

- (1) Chapter 47, Laws of 1923;
- (2) Sections 18, 22, and 23, chapter 22, Laws of 1951 second extraordinary session;
- (3) Section 1, chapter 88, 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. [1959 c 27 § 69.32.930.]

69.32.940 Emergency—1959 c 27. 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 27 § 69.32.940.]

69.32.950 Statement of public policy. The habitual use of opium, morphine, cocaine, alkaloid cocaine, coca leaves or alpha or beta eucaine, their derivatives and other habit-forming drugs hereinafter named is detrimental and dangerous to the individual and to public safety, health and morals. [1959 c 27 § 69.32.950. Prior: 1923 c 47 § 1; RRS § 2509-1.]

69.32.960 Chapter is cumulative. The provisions of this chapter shall be cumulative with and additional to the existing laws and regulations and nothing herein contained shall abridge or limit the powers of health authorities as construed by the supreme court of the state of Washington, except as herein otherwise provided. [1959 c 27 § 69.32.960.]

Chapter 69.36

WASHINGTON CAUSTIC POISON ACT OF 1929

Sections

69.36.010	Definitions.
69.36.020	Misbranded sales, etc., prohibited—Exceptions.
69.36.030	Condemnation of misbranded packages.
69.36.040	Enforcement—Approval of labels.
69.36.050	Duty to prosecute.
69.36.060	Penalty.
69.36.070	Short title.

Highway transportation of poisons, corrosives, etc.: RCW 46.48.170 through 46.48.190.

69.36.010 Definitions. In this chapter, unless the context or subject matter otherwise requires,

(1) The term "dangerous caustic or corrosive substance" means each and all of the acids, alkalis, and substances named below: (a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of ten percent or more; (b) Sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H₂SO₄) in concentration of ten percent or more; (c) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO₃) in a concentration of five percent or more; (d) Carboic acid (C₆H₅OH), otherwise known as phenol, and any preparation containing carboic acid in a concentration of five percent or more; (e) Oxalic acid and any preparation containing free or chemically unneutralized oxalic acid (H₂C₂O₄) in a concentration of ten percent or more; (f) Any salt of oxalic acid and any preparation containing any such salt in a concentration of ten percent or more; (g) Acetic acid or any preparation containing free or chemically unneutralized acetic acid (HC₂H₃O₂) in a concentration of twenty percent or more; (h) Hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten percent or more by weight of available chlorine, excluding calx chlorinata, bleaching powder, and chloride of lime; (i) Potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten percent or more; (j) Sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a

concentration of ten percent or more; (k) Silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate (AgNO_3) in a concentration of five percent or more, and (l) Ammonia water and any preparation yielding free or chemically uncombined ammonia (NH_3), including ammonium hydroxide and "hartshorn", in a concentration of five percent or more.

(2) The term "misbranded parcel, package, or container" means a retail parcel, package, or container of any dangerous caustic or corrosive substance for household use, not bearing a conspicuous, easily legible label or sticker, containing (a) the name of the article; (b) the name and place of business of the manufacturer, packer, seller, or distributor; (c) the word "POISON", running parallel with the main body of reading matter on said label or sticker, on a clear, plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than twenty-four point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and (d) directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance; *Provided*, That such directions need not appear on labels or stickers on parcels, packages or containers at the time of shipment or of delivery for shipment by manufacturers or wholesalers for other than household use. *Provided further*, That this chapter is not to be construed as applying to any substance subject to the chapter, sold at wholesale or retail for use by a retail druggist in filling prescriptions or in dispensing, in pursuance of a prescription by a physician, dentist, or veterinarian; or for use by or under the direction of a physician, dentist, or veterinarian; or for use by a chemist in the practice or teaching of his profession; or for any industrial or professional use, or for use in any of the arts and sciences. [1929 c 82 § 1; RRS § 2508-1. Formerly RCW 69.36-.010 and 69.36.020, part.]

69.36.020 Misbranded sales, etc., prohibited—
Exceptions. No person shall sell, barter, or exchange, or receive, hold, pack, display, or offer for sale, barter, or exchange, in this state any dangerous caustic or corrosive substance in a misbranded parcel, package, or container, said parcel, package, or container being designed for household use; *Provided*, That household products for cleaning and washing purposes, subject to this chapter and labeled in accordance therewith, may be sold, offered for sale, held for sale and distributed in this state by any dealer, wholesale or retail; *Provided further*, That no person shall be liable to prosecution and conviction under this chapter when he establishes a guaranty bearing the signature and address of a vendor residing in the United States from whom he purchased the dangerous caustic or corrosive substance, to the effect that such substance is not misbranded within the meaning of this chapter. No person in this state shall give any such guaranty when such dangerous caustic or corrosive substance is in fact misbranded within the meaning of this chapter. [1929 c 82 § 2; RRS § 2508-2. FORMER PART OF SECTION: 1929 c 82 § 1 now codified in RCW 69.32.010.]

69.36.030 Condemnation of misbranded packages. Any dangerous caustic or corrosive substance in a misbranded parcel, package, or container suitable for household use, that is being sold, bartered, or exchanged, or held, displayed, or offered for sale, barter, or exchange, shall be liable to be proceeded against in any superior court within the jurisdiction of which the same is found and seized for confiscation, and if such substance is condemned as misbranded, by said court, it shall be disposed of by destruction or sale, as the court may direct; and if sold, the proceeds, less the actual costs and charges, shall be paid over to the state treasurer; but such substance shall not be sold contrary to the laws of the state: *Provided, however*, That upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such substance will not be unlawfully sold or otherwise disposed of, the court may by order direct that such substance be delivered to the owner thereof. Such condemnation proceedings shall conform as near as may be to proceedings in the seizure, and condemnation of substances unfit for human consumption. [1929 c 82 § 3; RRS § 2508-3.]

69.36.040 Enforcement—Approval of labels. The director of agriculture shall enforce the provisions of this chapter, and he is hereby authorized and empowered to approve and register such brands and labels intended for use under the provisions of this chapter as may be submitted to him for that purpose and as may in his judgment conform to the requirements of this statute: *Provided, however*, That in any prosecution under this chapter the fact that any brand or label involved in said prosecution has not been submitted to said director for approval, or if submitted, has not been approved by him, shall be immaterial. [1929 c 82 § 5; RRS § 2508-5.]

69.36.050 Duty to prosecute. Every prosecuting attorney to whom there is presented, or who in any way procures, satisfactory evidence of any violation of the provisions of this chapter shall cause appropriate proceedings to be commenced and prosecuted in the proper courts, without delay, for the enforcement of the penalties as in such cases herein provided. [1929 c 82 § 6; RRS § 2508-6.]

69.36.060 Penalty. Any person violating the provisions of this chapter shall be guilty of a misdemeanor. [1929 c 82 § 4; RRS § 2508-4.]

69.36.070 Short title. This chapter may be cited as the Washington Caustic Poison Act of 1929. [1929 c 82 § 7; RRS § 2508-7.]

Chapter 69.40 POISONS AND DANGEROUS DRUGS

Sections	
69.40.010	Poison in edible products.
69.40.015	Poison in edible products—Penalty.
69.40.020	Poison in milk or food products—Penalty.
69.40.025	Supplementary to existing laws—Enforcement.

- 69.40.030 Placing poison or other harmful object or substance in food, drinks, medicine or water—Penalty.
 69.40.050 Selling poison without labeling and recording the sale—Penalty.
 69.40.150 Drug control assistance unit investigative assistance for enforcement of chapter.

Pharmacists: Chapter 18.64 RCW.

Poisoning animals—Strychnine sales: RCW 16.52.190–16.52.195.

Poisonous bait, etc., a game violation: RCW 77.16.060.

Washington pesticide application act: Chapter 17.21 RCW.

69.40.010 Poison in edible products. It shall be unlawful for any person to sell, offer for sale, use, distribute, or leave in any place, any crackers, biscuit, bread or any other preparation resembling or in similitude, of any edible product, containing arsenic, strychnine or any other poison. [1905 c 141 § 1; RRS § 6140. FORMER PART OF SECTION: 1905 c 141 § 2 now codified as RCW 69.40.015.]

69.40.015 Poison in edible products—Penalty. Any person violating the provisions of RCW 69.40.010 shall upon conviction be punished by a fine of not less than ten dollars nor more than five hundred dollars. [1905 c 141 § 2; RRS § 6141. Formerly RCW 69.40.010, part.]

69.40.020 Poison in milk or food products—Penalty. Any person who shall sell, offer to sell, or have in his possession for the purpose of sale, either as owner, proprietor, or assistant, or in any manner whatsoever, whether for hire or otherwise, any milk or any food products, containing the chemical ingredient commonly known as formaldehyde, or in which any formaldehyde or other poisonous substance has been mixed, for the purpose of preservation or otherwise, shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the penitentiary for the period of not less than one year nor more than three years. [1905 c 50 § 1; RRS § 6142. FORMER PART OF SECTION: 1905 c 50 § 2 now codified as RCW 69.40.025.]

69.40.025 Supplementary to existing laws—Enforcement. This act shall be supplementary to the laws of this state now in force prohibiting the adulteration of food and fraud in the sale thereof; and the state dairy and food commissioner, the chemist of the state agricultural experiment station, the state attorney general and the prosecuting attorneys of the several counties of this state are hereby required, without additional compensation, to assist in the execution of *this act, and in the prosecution of all persons charged with the violation thereof, in like manner and with like powers as they are now authorized and required by law to enforce the laws of this state against the adulteration of food and fraud in the sale thereof. [1905 c 50 § 2; RRS § 6143. Formerly RCW 69.40.020, part.]

*Reviser's note: (1) "this act" appears in 1905 c 50 codified as RCW 69.40.020 and 69.40.025.

(2) The duties of the state dairy and food commissioner have devolved upon the director of agriculture through a chain of statute as follows: 1913 c 60 § 6(2); 1921 c 7 § 93(1). See RCW 43.23.090(1).

69.40.030 Placing poison or other harmful object or substance in food, drinks, medicine or water—Penalty. Every person who shall wilfully mingle poison or place any harmful object or substance, including but not limited to pins, tacks, needles, nails, razor blades, wire, or glass in any food, drink, medicine, or other edible substance intended or prepared for the use of a human being or who shall knowingly furnish, with intent to harm another person, any food, drink, medicine, or other edible substance containing such poison or harmful object or substance to another human being, and every person who shall wilfully poison any spring, well or reservoir of water, shall be punished by imprisonment in the state penitentiary for not less than five years or by a fine of not less than one thousand dollars: *Provided, however,* That *this act shall not apply to the employer or employers of a person who violates the provisions contained herein without such employer's knowledge. [1973 c 119 § 1; 1909 c 249 § 264; RRS § 2516. Prior: Code 1881 § 802; 1873 p 185 § 27; 1869 p 202 § 25; 1854 p 79 § 25.]

*Reviser's note: "this act" apparently refers to the amendment to this section by 1973 c 119 § 1.

Reviser's note: Caption for 1909 c 249 § 264 reads: "Wilfully poisoning food."

69.40.050 Selling poison without labeling and recording the sale—Penalty. It shall be unlawful for any person to sell at retail or furnish any of the poisons named in the schedules hereinafter set forth, without affixing or causing to be affixed to the bottle, box, vessel or package, a label containing the name of the article and the word "poison" distinctly shown, with the name and place of business of the seller, all printed in red ink, together with the name of such poison printed or written thereon in plain, legible characters, which schedules are as follows, to wit:

SCHEDULE "A"

Arsenic, cyanide of potassium, hydrocyanic acid, cocaine, morphine, strychnia and all other poisonous vegetable alkaloids and their salts, oil of bitter almonds, containing hydrocyanic acid, opium and its preparations, except paregoric and such others as contain less than two grains of opium to the ounce.

SCHEDULE "B"

Aconite, belladonna, cantharides, colchicum, conium, cotton root, digitalis, ergot, hellebore, henbane, phytolacca, strophanthus, oil of tansy, veratrum viride and their pharmaceutical preparations, arsenical solutions, carbolic acid, chloral hydrate, chloroform, corrosive sublimate, creosote, croton oil, mineral acids, oxalic acid, paris green, salts of lead, salts of zinc, white hellebore or any drug, chemical or preparation which, according to standard works on medicine or materia medica, is liable to be destructive to adult human life in quantities of sixty grains or less. Every person who shall dispose of or sell at retail or furnish any poisons included under schedule A shall, before delivering the same, make or cause to be made an entry in a book kept for that purpose, stating the date of sale, the name and address

of the purchaser, the name and the quantity of the poison, the purpose for which it is represented by the purchaser to be required and the name of the dispenser, such book to be always open for inspection by the proper authorities, and to be preserved for at least five years after the last entry. He shall not deliver any of said poisons to any minor, intoxicated person, or person known to be of unsound mind, or to any person without satisfying himself that the purchaser is aware of its poisonous character and that the said poison is to be used for a legitimate purpose. The foregoing portions of this section shall not apply to the dispensing of medicines, or poisons, on physicians' prescriptions. Wholesale dealers in drugs, medicines, pharmaceutical preparations or chemicals shall affix or cause to be affixed to every bottle, box, parcel or outer enclosure of an original package containing any of the articles enumerated under said schedule A, a suitable brand in red ink with the word "poison" upon it. Every person who shall violate any of the provisions of this section shall be guilty of a misdemeanor. [1909 c 249 § 256; RRS § 2508. Prior: Code 1881 § 954; 1873 p 211 § 135; 1869 p 227 § 129; 1854 p 97 § 123.]

69.40.150 Drug control assistance unit investigative assistance for enforcement of chapter. See RCW 43.43.610.

Chapter 69.41 LEGEND DRUGS

Sections	
69.41.010	Definitions.
69.41.020	Prohibited acts—Information not privileged communication.
69.41.030	Sale, delivery or possession of legend drug without prescription or order prohibited—Exceptions.
69.41.040	Prescription requirements.
69.41.050	Labeling requirements.
69.41.060	Search and seizure.
69.41.070	Penalties.

69.41.010 Definitions. As used in this chapter:

(1) "Administer" means the direct application of a legend drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner; or

(b) The patient or research subject at the direction of the practitioner.

(2) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a legend drug, whether or not there is an agency relationship.

(3) "Dispense" means to deliver a legend drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(4) "Dispenser" means a practitioner who dispenses.

(5) "Distribute" means to deliver other than by administering or dispensing a legend drug.

(6) "Distributor" means a person who distributes.

(7) "Drug" means:

(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in clause (a), (b), or (c) of this subsection. It does not include devices or their components, parts, or accessories.

(8) "Legend drugs" means any drugs which are required by any applicable federal or state law or regulation to be dispensed on prescription only or are restricted to use by practitioners only.

(9) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(10) "Practitioner" means:

(a) A physician under chapter 18.71 RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatrist under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse under chapter 18.88 RCW, a licensed practical nurse under chapter 18.78 RCW, or a pharmacist under chapter 18.64 RCW.

(b) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a legend drug in the course of professional practice or research in this state. [1973 1st ex.s. c 186 § 1.]

69.41.020 Prohibited acts—Information not privileged communication. Legend drugs shall not be sold, delivered, dispensed or administered except in accordance with this chapter.

(1) No person shall obtain or attempt to obtain a legend drug, or procure or attempt to procure the administration of a legend drug:

(a) By fraud, deceit, misrepresentation, or subterfuge; or

(b) By the forgery or alteration of a prescription or of any written order; or

(c) By the concealment of a material fact; or

(d) By the use of a false name or the giving of a false address.

(2) Information communicated to a practitioner in an effort unlawfully to procure a legend drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall wilfully make a false statement in any prescription, order, report, or record, required by this chapter.

(4) No person shall, for the purpose of obtaining a legend drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, or any practitioner.

(5) No person shall make or utter any false or forged prescription or other written order for legend drugs.

(6) No person shall affix any false or forged label to a package or receptacle containing legend drugs. [1973 1st ex.s. c 186 § 2.]

69.41.030 Sale, delivery or possession of legend drug without prescription or order prohibited—Exceptions. It shall be unlawful for any person to sell, deliver or possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatrist under chapter 18.22 RCW, or a veterinarian under chapter 18.92 RCW: *Provided, however,* That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment. [1973 1st ex.s. c 186 § 3.]

69.41.040 Prescription requirements. A prescription, in order to be effective in legalizing the possession of legend drugs, must be issued for a legitimate medical purpose by one authorized to prescribe the use of such legend drugs. An order purporting to be a prescription issued to a drug abuser or habitual user of legend drugs, not in the course of professional treatment, is not a prescription within the meaning and intent of this section; and the person who knows or should know that he is filling such an order, as well as the person issuing it, may be charged with violation of this chapter. A legitimate medical purpose shall include use in the course of a bona fide research program in conjunction with a hospital or university. [1973 1st ex.s. c 186 § 4.]

69.41.050 Labeling requirements. To every box, bottle, jar, tube or other container of a legend drug, which is dispensed by a practitioner authorized to prescribe legend drugs, there shall be affixed a label bearing the name of the prescriber, complete directions for use, the name of the drug and strength per unit dose, name of patient and date: *Provided,* That the practitioner may omit the name and dosage of the drug if he determines that his patient should not have this information and that, if the drug dispensed is a trial sample in its original package and which is labeled in accordance with federal law or regulation, there need be set forth additionally only the name of the issuing practitioner and the name of the patient. [1973 1st ex.s. c 186 § 5.]

69.41.060 Search and seizure. If, upon the sworn complaint of any person, it shall be made to appear to any judge of the superior court or justice of the peace that there is probable cause to believe that any legend drug is being used, manufactured, sold, bartered, exchanged, given away, furnished or otherwise disposed of or kept in violation of the provisions of this chapter, such justice of the peace or judge shall, with or without the approval of the prosecuting attorney, issue a warrant

directed to any peace officer in the county, commanding him to search the premises designated and described in such complaint and warrant, and to seize all legend drugs there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnishing or otherwise disposing of such legend drugs and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of said articles, the returns shall so state. A copy of said warrant shall be served upon the person or persons found in possession of any such legend drugs, furniture or fixtures so seized, and if no person be found in the possession thereof, a copy of said warrant shall be posted on the door of the building or room wherein the same are found, or, if there be no door, then in any conspicuous place upon the premises. [1973 1st ex.s. c 186 § 6.]

69.41.070 Penalties. Whoever violates any provision of this chapter shall, upon conviction, be fined and imprisoned as herein provided:

(1) For a violation of RCW 69.41.020, the offender shall be guilty of a felony.

(2) For a violation of RCW 69.41.030 involving the sale, delivery or possession with intent to sell or deliver, the offender shall be guilty of a felony.

(3) For a violation of RCW 69.41.030 involving possession, the offender shall be guilty of a misdemeanor.

(4) For a violation of RCW 69.41.040, the offender shall be guilty of a felony.

(5) For a violation of RCW 69.41.050, the offender shall be guilty of a misdemeanor.

(6) Any offense which is a violation of chapter 69.50 RCW shall not be charged under this chapter. [1973 1st ex.s. c 186 § 7.]

Chapter 69.50

UNIFORM CONTROLLED SUBSTANCES ACT

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**ARTICLE I
DEFINITIONS**

69.50.101 Definitions. As used in this chapter:

(a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(1) a practitioner, or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(c) "Bureau" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, or its successor agency.

(d) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of Article II.

(e) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(f) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(g) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(h) "Dispenser" means a practitioner who dispenses.

(i) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(j) "Distributor" means a person who distributes.

(k) "Drug" means (1) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2), or (3) of this subsection. It does not include devices or their components, parts, or accessories.

(l) "Immediate precursor" means a substance which the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(m) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(1) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or

(2) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(n) "Marihuana" means all parts of the plant of the genus *Cannabis* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant;

and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(o) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause 1, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(p) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(q) "Opium poppy" means the plant of the genus *Papaver* L., except its seeds, capable of producing an opiate.

(r) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(s) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(t) "Practitioner" means:

(1) A physician under chapter 18.71 RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a chiropodist under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse under chapter 18.88 RCW, a licensed practical nurse under chapter 18.78 RCW, a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense,

conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(u) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(v) "State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(w) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(x) "Board" means the state board of pharmacy.

(y) "Executive officer" means the executive officer of the state board of pharmacy. [1973 2nd ex.s. c 38 § 1; 1971 ex.s. c 308 § 69.50.101.]

Severability—1973 2nd ex.s. c 38: "If any of the provisions of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the amendatory act, or the application of the provision to other persons or circumstances, or the act prior to its amendment is not affected." [1973 2nd ex.s. c 38 § 3.] This applies to the amendments to RCW 69.50.101 and 46.61.520 by 1973 2nd ex.s. c 38.

ARTICLE II STANDARDS AND SCHEDULES

69.50.201 Authority to control. (a) The state board of pharmacy shall administer this chapter and may add substances to or delete or reschedule all substances enumerated in the schedules in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, or 69.50.212 pursuant to the rule-making procedures of chapter 34.04 RCW. In making a determination regarding a substance, the board shall consider the following:

- (1) the actual or relative potential for abuse;
- (2) the scientific evidence of its pharmacological effect, if known;
- (3) the state of current scientific knowledge regarding the substance;
- (4) the history and current pattern of abuse;
- (5) the scope, duration, and significance of abuse;
- (6) the risk to the public health;
- (7) the potential of the substance to produce psychic or physiological dependence liability; and
- (8) whether the substance is an immediate precursor of a substance already controlled under this Article.

(b) After considering the factors enumerated in subsection (a) the board may issue a rule controlling the substance if it finds the substance has a potential for abuse.

(c) If the board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the board, the substance shall

be similarly controlled under this chapter after the expiration of thirty days from publication in the Federal Register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, unless within that thirty day period, the board objects to inclusion, rescheduling, or deletion. In that case, the board shall proceed pursuant to the rule-making procedures of chapter 34.04 RCW.

(e) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Title 66 RCW and Title 26 RCW.

(f) The board shall exclude any nonnarcotic substances from a schedule if such substances may, under the Federal Food, Drug and Cosmetic Act, and under regulations of the bureau, and the laws of this state including RCW 18.64.250, be lawfully sold over the counter. [1971 ex.s. c 308 § 69.50.201.]

69.50.202 Nomenclature. The controlled substances listed or to be listed in the schedules in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212 are included by whatever official, common, usual, chemical, or trade name designated. [1971 ex.s. c 308 § 69.50.202.]

69.50.203 Schedule I tests. The state board of pharmacy shall place a substance in Schedule I if it finds that the substance:

- (1) has high potential for abuse; and
- (2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision. [1971 ex.s. c 308 § 69.50.203.]

69.50.204 Schedule I. (a) The controlled substances listed in this section are included in Schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetylmethadol;
- (2) Allylprodine;
- (3) Alphacetylmethadol;
- (4) Alphameprodine;
- (5) Alphamethadol;
- (6) Benzethidine;
- (7) Betacetylmethadol;
- (8) Betameprodine;
- (9) Betamethadol;
- (10) Betaprodine;
- (11) Clonitazene;
- (12) Dextromoramide;
- (13) Dextrorphan;
- (14) Diampromide;
- (15) Diethylthiambutene;
- (16) Dimenoxadol;
- (17) Dimepheptanol;
- (18) Dimethylthiambutene;
- (19) Dioxaphetyl butyrate;
- (20) Dipipanone;

- (21) Ethylmethylthiambutene;
- (22) Etonitazene;
- (23) Etoxidine;
- (24) Furethidine;
- (25) Hydroxypethidine;
- (26) Ketobemidone;
- (27) Levomoramide;
- (28) Levophenacymorphan;
- (29) Morpheridine;
- (30) Noracymethadol;
- (31) Norlevorphanol;
- (32) Normethadone;
- (33) Norpipanone;
- (34) Phenadoxone;
- (35) Phenampromide;
- (36) Phenomorphan;
- (37) Phenoperidine;
- (38) Piritramide;
- (39) Propheptazine;
- (40) Properidine;
- (41) Racemoramide;
- (42) Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Etorphine;
- (10) Heroin;
- (11) Hydromorphanol;
- (12) Methyldesorphine;
- (13) Methyldihydromorphine;
- (14) Morphine methylbromide;
- (15) Morphine methylsulfonate;
- (16) Morphine-N-Oxide;
- (17) Myrophine;
- (18) Nicocodeine;
- (19) Nicomorphine;
- (20) Normorphine;
- (21) Phoclodine;
- (22) Thebacon.

(d) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine;
- (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- (3) 3,4,5-trimethoxy amphetamine;
- (4) Bufotenine;
- (5) Diethyltryptamine;
- (6) Dimethyltryptamine;
- (7) 4-methyl-2,5-dimethoxyamphetamine;

- (8) Ibogaine;
- (9) Lysergic acid diethylamide;
- (10) Marihuana;
- (11) Mescaline;
- (12) Peyote;
- (13) N-ethyl-3-piperidyl benzilate;
- (14) N-methyl-3-piperidyl benzilate;
- (15) Psilocybin;
- (16) Psilocyn;
- (17) Tetrahydrocannabinols. [1971 ex.s. c 308 § 69.50.204.]

69.50.205 Schedule II tests. The state board of pharmacy shall place a substance in Schedule II if it finds that:

- (1) the substance has high potential for abuse;
- (2) the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (3) the abuse of the substance may lead to severe psychic or physical dependence. [1971 ex.s. c 308 § 69.50.205.]

69.50.206 Schedule II. (a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
- (2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.
- (3) Opium poppy and poppy straw.
- (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Alphaprodine;
- (2) Anileridine;
- (3) Bezitramide;
- (4) Dihydrocodeine;
- (5) Diphenoxylate;
- (6) Fentanyl;
- (7) Isomethadone;
- (8) Levomethorphan;
- (9) Levorphanol;
- (10) Metazocine;
- (11) Methadone;
- (12) Methadone—Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

- (13) Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (14) Pethidine;
- (15) Pethidine—Intermediate—A, 4-cyano-1-methyl-4-phenylpiperidine;
- (16) Pethidine—Intermediate—B, ethyl-4-phenylpiperidine-4-carboxylate;
- (17) Pethidine—Intermediate—C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (18) Phenazocine;
- (19) Piminodine;
- (20) Racemethorphan;
- (21) Racemorphan. [1971 ex.s. c 308 § 69.50.206.]

69.50.207 Schedule III tests. The state board of pharmacy shall place a substance in Schedule III if it finds that:

- (1) the substance has a potential for abuse less than the substances listed in Schedules I and II;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence. [1971 ex.s. c 308 § 69.50.207.]

69.50.208 Schedule III. (a) The controlled substances listed in this section are included in Schedule III.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) Phenmetrazine and its salts;
- (3) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;
- (4) Methylphenidate.

(c) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other Schedules;
 - (2) Chlorhexadol;
 - (3) Glutethimide;
 - (4) Lysergic acid;
 - (5) Lysergic acid amide;
 - (6) Methyprylon;
 - (7) Phencyclidine;
 - (8) Sulfondiethylmethane;
 - (9) Sulfonethylmethane;
 - (10) Sulfonmethane.
- (d) Nalorphine.

(e) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

- (1) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams

per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) The state board of pharmacy may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system. [1971 ex.s. c 308 § 69.50.208.]

69.50.209 Schedule IV tests. The state board of pharmacy shall place a substance in Schedule IV if it finds that:

(1) the substance has a low potential for abuse relative to substances in Schedule III;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III. [1971 ex.s. c 308 § 69.50.209.]

69.50.210 Schedule IV. (a) The controlled substances listed in this section are included in Schedule IV.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances

having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Barbitol;

(2) Chloral betaine;

(3) Chloral hydrate;

(4) Ethchlorvynol;

(5) Ethinamate;

(6) Methohexital;

(7) Meprobamate;

(8) Methylphenobarbital;

(9) Paraldehyde;

(10) Petrichloral;

(11) Phenobarbital.

(c) The state board of pharmacy may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (b) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system. [1971 ex.s. c 308 § 69.50.210.]

69.50.211 Schedule V tests. The state board of pharmacy shall place a substance in Schedule V if it finds that:

(1) the substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) the substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV. [1971 ex.s. c 308 § 69.50.211.]

69.50.212 Schedule V. (a) The controlled substances listed in this section are included in Schedule V.

(b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams. [1971 ex.s. c 308 § 69.50.212.]

69.50.213 Republishing of schedules. The state board of pharmacy shall at least semiannually for two years

from May 21, 1971 and thereafter annually consider the revision of the schedules published pursuant to chapter 34.04 RCW. [1971 ex.s. c 308 § 69.50.213.]

ARTICLE III
REGULATION OF MANUFACTURE,
DISTRIBUTION AND DISPENSING OF
CONTROLLED SUBSTANCES

69.50.301 Rules. The state board of pharmacy may promulgate rules and charge reasonable fees of not less than ten dollars or more than fifty dollars relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state. [1971 ex.s. c 308 § 69.50.301.]

69.50.302 Registration requirements. (a) Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, must obtain annually a registration issued by the state board of pharmacy in accordance with its rules.

(b) Persons registered by the board under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this Article.

(c) The following persons need not register and may lawfully possess controlled substances under this chapter:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if he is acting in the usual course of his business or employment: *Provided*, That this exemption shall not include any agent or employee distributing sample controlled substances to practitioners without an order;

(2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

(d) The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety: *Provided*, That personal practitioners licensed or registered in the state of Washington under the respective professional licensing acts shall not be required to be registered under this chapter unless the specific exemption is denied pursuant to RCW 69.50.305 for violation of any provisions of this chapter.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The board may inspect the establishment of a registrant or applicant for registration in accordance with the board's rule. [1971 ex.s. c 308 § 69.50.302.]

69.50.303 Registration. (a) The state board of pharmacy shall register an applicant to manufacture or distribute controlled substances included in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable state and local law;

(3) any convictions of the applicant under any federal and state laws relating to any controlled substance;

(4) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;

(5) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(6) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

(7) any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered, or exempted under RCW 69.50.302(d), to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the law of this state. The board need not require separate registration under this Article for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this Article in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the board evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration entitles them to be registered under this chapter upon application and payment of the required fee. [1971 ex.s. c 308 § 69.50.303.]

69.50.304 Revocation and suspension of registration. (a) A registration, or exemption from registration, under RCW 69.50.303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the state board of pharmacy upon a finding that the registrant:

(1) has furnished false or fraudulent material information in any application filed under this chapter;

(2) has been found guilty of a felony under any state or federal law relating to any controlled substance; or

(3) has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(b) The board may limit revocation or suspension of a registration to the particular controlled substance or schedule of controlled substances, with respect to which grounds for revocation or suspension exist.

(c) If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) The board shall promptly notify the Bureau of all orders suspending or revoking registration and all forfeitures of controlled substances. [1971 ex.s. c 308 § 69.50.304.]

69.50.305 Procedure for denial, suspension or revocation of registration. (a) Any registration, or exemption from registration, issued pursuant to the provisions of this chapter shall not be denied, suspended, or revoked unless the board denies, suspends, or revokes such registration, or exemption from registration, by proceedings consistent with the administrative procedure act, chapter 34.04 RCW.

(b) The board may suspend any registration simultaneously with the institution of proceedings under RCW 69.50.304, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction. [1971 ex.s. c 308 § 69.50.305.]

69.50.306 Records of registrants. Persons registered, or exempted from registration under RCW 69.50.302(d), to manufacture, distribute, dispense, or administer controlled substances under this chapter shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the state board of pharmacy issues. [1971 ex.s. c 308 § 69.50.306.]

69.50.307 Order forms. Controlled substances in Schedule I and II shall be distributed by a registrant or person exempt from registration under RCW 69.50.302(d) to another registrant, or person exempt from registration under RCW 69.50.302(d), only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section. [1971 ex.s. c 308 § 69.50.307.]

69.50.308 Prescriptions. (a) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner.

(b) In emergency situations, as defined by rule of the state board of pharmacy, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of RCW 69.50.306. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance to an ultimate user, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under RCW 69.04.560, shall not be dispensed without a written or oral prescription of a practitioner. Any oral prescription must be promptly reduced to writing. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(d) A valid prescription or lawful order of a practitioner, in order to be effective in legalizing the possession of controlled substances, must be issued in good faith for a legitimate medical purpose by one authorized to prescribe the use of such controlled substance. An order purporting to be a prescription not in the course of professional treatment is not a valid prescription or lawful order of a practitioner within the meaning and intent of this chapter; and the person who knows or should know that he is filling such an order, as well as the person issuing it, can be charged with a violation of this chapter.

(e) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose. [1971 ex.s. c 308 § 69.50.308.]

69.50.309 Containers. A person to whom or for whose use any controlled substance has been prescribed, sold, or dispensed by a practitioner, and the owner of any animal for which such controlled substance has been prescribed, sold, or dispensed may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same. [1971 ex.s. c 308 § 69.50.309.]

ARTICLE IV OFFENSES AND PENALTIES

69.50.401 Prohibited acts A—Penalties. (a) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this subsection with respect to:

(i) a controlled substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, or fined not more than twenty-five thousand dollars, or both;

(ii) any other controlled substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iii) a substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess a counterfeit substance.

(1) Any person who violates this subsection with respect to:

(i) a counterfeit substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(ii) any other counterfeit substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iii) a counterfeit substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a counterfeit substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(c) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a crime, and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both, except as provided for in subsection (d) of this section.

(d) Except as provided for in subsection (a)(1)(ii) of this section any person found guilty of possession of forty grams or less of marihuana shall be guilty of a misdemeanor.

This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.410. [1973 2nd ex.s. c 2 § 1; 1971 ex.s. c 308 § 69.50.401.]

69.50.402 Prohibited acts B—Penalties. (a) It is unlawful for any person:

(1) who is subject to Article III to distribute or dispense a controlled substance in violation of RCW 69.50.308;

(2) who is a registrant, to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) to refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter;

(4) to refuse an entry into any premises for any inspection authorized by this chapter; or

(5) knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

(b) Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than two years, fined not more than two thousand dollars, or both. [1971 ex.s. c 308 § 69.50.402.]

69.50.403 Prohibited acts C—Penalties. (a) It is unlawful for any person knowingly or intentionally:

(1) To distribute as a registrant a controlled substance classified in Schedules I or II, except pursuant to an order form as required by RCW 69.50.307;

(2) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) To obtain or attempt to obtain a controlled substance, or procure or attempt to procure the administration of a controlled substance, (i) by fraud, deceit, misrepresentation, or subterfuge; or (ii) by forgery or alteration of a prescription or any written order; or (iii) by the concealment of material fact; or (iv) by the use of a false name or the giving of a false address.

(4) To falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, or other authorized person for the purpose of obtaining a controlled substance.

(5) To make or utter any false or forged prescription or false or forged written order.

(6) To affix any false or forged label to a package or receptacle containing controlled substances.

(7) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; or

(8) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Information communicated to a practitioner in an effort unlawfully to procure a controlled substance or unlawfully to procure the administration of such substance, shall not be deemed a privileged communication.

(c) Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than two years, or fined not more than two thousand dollars, or both. [1971 ex.s. c 308 § 69.50.403.]

69.50.404 Penalties under other laws. Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or

sanction otherwise authorized by law. [1971 ex.s. c 308 § 69.50.404.]

69.50.405 Bar to prosecution. If a violation of this chapter is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state. [1971 ex.s. c 308 § 69.50.405.]

69.50.406 Distribution to persons under age eighteen. Any person eighteen years of age or over who violates RCW 69.50.401(a) by distributing a controlled substance listed in Schedules I or II which is a narcotic drug to a person under eighteen years of age who is at least three years his junior is punishable by the fine authorized by RCW 69.50.401(a)(1)(i), by a term of imprisonment of up to twice that authorized by RCW 69.50.401(a)(1)(i), or by both. Any person eighteen years of age or over who violates RCW 69.50.401(a) by distributing any other controlled substance listed in Schedules I, II, III, IV, and V to a person under eighteen years of age who is at least three years his junior is punishable by the fine authorized by RCW 69.50.401(a)(1)(ii), (iii), or (iv), by a term of imprisonment up to twice that authorized by RCW 69.50.401(a)(1)(ii), (iii), or (iv), or both. [1971 ex.s. c 308 § 69.50.406.]

69.50.407 Conspiracy. Any person who attempts or conspires to commit any offense defined in this chapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy. [1971 ex.s. c 308 § 69.50.407.]

69.50.408 Second or subsequent offenses. (a) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

(c) This section does not apply to offenses under RCW 69.50.401(c). [1971 ex.s. c 308 § 69.50.408.]

69.50.410 Prohibited acts D—Penalties. (1) Except as authorized by this chapter it shall be unlawful for any person to sell for profit any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana.

For the purposes of this section only, the following words and phrases shall have the following meanings:

(a) "To sell" means the passing of title and possession of a controlled substance from the seller to the buyer for a price whether or not the price is paid immediately or at a future date.

(b) "For profit" means the obtaining of anything of value in exchange for a controlled substance.

(c) "Price" means anything of value.

(2) Any person convicted of a violation of subsection (1) of this section shall receive a sentence of not more than five years in a correctional facility of the department of social and health services for the first offense. Any person convicted on a second or subsequent cause, the sale having transpired after prosecution and conviction on the first cause, of subsection (1) of this section shall receive a mandatory sentence of five years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for the second or subsequent violation of subsection (1) of this section.

(3) Any person convicted of a violation of subsection (1) of this section by selling heroin shall receive a mandatory sentence of two years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for such violation. Any person convicted on a second or subsequent sale of heroin, the sale having transpired after prosecution and conviction on the first cause of the sale of heroin shall receive a mandatory sentence of ten years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for this second or subsequent violation: *Provided*, That the board of prison terms and paroles under RCW 9.95-.040 shall not reduce the minimum term imposed for a violation under this subsection.

(4) In addition to the sentences provided in subsection (2) of this section, any person convicted of a violation of subsection (1) of this section shall be fined in an amount calculated to at least eliminate any and all proceeds or profits directly or indirectly gained by such person as a result of sales of controlled substances in violation of the laws of this or other states, or the United States, up to the amount of five hundred thousand dollars on each count.

(5) Any person, addicted to the use of controlled substances, who voluntarily applies to the department of social and health services for the purpose of participating in a rehabilitation program approved by the department for addicts of controlled substances shall be immune from prosecution for subsection (1) offenses unless a filing of an information or indictment against such person for a violation of subsection (1) of this section is made prior to his voluntary participation in the program of the department of social and health services. All applications for immunity under this section shall be sent to the department of social and health services in Olympia. It shall be the duty of the department to stamp each application received pursuant to this section with the date and time of receipt.

This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.401 as now or hereafter amended. [1975-'76 2nd ex.s. c 103 § 1; 1973 2nd ex.s. c 2 § 2.]

ARTICLE V
ENFORCEMENT AND ADMINISTRATIVE
PROVISIONS

69.50.500 Powers of enforcement personnel. (a) It is hereby made the duty of the state board of pharmacy, its officers, agents, inspectors and representatives, and all law enforcement officers within the state, and of all prosecuting attorneys, to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and all other states, relating to controlled substances as defined in this chapter.

(b) Employees of the Washington state board of pharmacy, who are so designated by the board as enforcement officers are declared to be peace officers and shall be vested with police powers to enforce the drug laws of this state, including this chapter. [1971 ex.s. c 308 § 69.50.500.]

69.50.501 Administrative inspections. The state board of pharmacy may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

(a) places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(b) places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to RCW 69.50.502 an officer or employee designated by the board, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the board may:

(a) inspect and copy records required by this chapter to be kept;

(b) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (5) of this section, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

(c) inventory any stock of any controlled substance therein and obtain samples thereof;

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an

administrative subpoena issued in accordance with chapter 34.04 RCW, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(a) if the owner, operator, or agent in charge of the controlled premises consents;

(b) in situations presenting imminent danger to health or safety;

(c) in situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(d) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or,

(e) in all other situations in which a warrant is not constitutionally required;

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing. [1971 ex.s. c 308 § 69.50.501.]

69.50.502 Warrants for administrative inspections. Issuance and execution of administrative inspection warrants shall be as follows:

(1) A judge of a superior court, or a judge of a district court within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures or property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

(a) state the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(b) be directed to a person authorized by RCW 69.50.500 to execute it;

(c) command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(d) identify the item or types of property to be seized, if any;

(e) direct that it be served during normal business hours and designate the judge to whom it shall be returned;

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

(4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the court in which the inspection was made. [1971 ex.s. c 308 § 69.50.502.]

69.50.503 Injunctions. (a) The superior courts of this state have jurisdiction to restrain or enjoin violations of this chapter.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section. [1971 ex.s. c 308 § 69.50.503.]

69.50.504 Cooperative arrangements. The state board of pharmacy shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. [1971 ex.s. c 308 § 69.50.504.]

69.50.505 Forfeitures. (a) The following are subject to forfeiture:

(1) all controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this chapter;

(2) all raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;

(3) all property which is used, or intended for use, as a container for property described in paragraphs (1) or (2);

(4) all conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (1) or (2), but:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the

conveyance is a consenting party or privy to a violation of this chapter;

(ii) no conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;

(iii) a conveyance is not subject to forfeiture for a violation of RCW 69.50.401(c); and,

(iv) a forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.

(5) all books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.

(b) Property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure without process may be made if:

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(3) a board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b), proceedings under subsection (d) shall be instituted promptly.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the board or seizing law enforcement agency subject only to the orders and decrees of the superior court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the board or seizing law enforcement agency may:

(1) place the property under seal;

(2) remove the property to a place designated by it; or

(3) request the appropriate sheriff or director of public safety to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(e) When property is forfeited under this chapter the board or seizing law enforcement agency may:

(1) retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(2) sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs;

(3) request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(4) forward it to the Bureau for disposition.

(f) Controlled substances listed in Schedule I, II, III, IV and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV and V, which are seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

(g) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

(h) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants. [1971 ex.s. c 308 § 69.50.505.]

69.50.506 Burden of proof; liabilities. (a) It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, he is presumed not to be the holder of the registration or form. The burden of proof is upon him to rebut the presumption.

(c) No liability is imposed by this chapter upon any authorized state, county or municipal officer, engaged in the lawful performance of his duties. [1971 ex.s. c 308 § 69.50.506.]

69.50.507 Judicial review. All final determinations, findings and conclusions of the state board of pharmacy under this chapter are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the superior court wherein he resides or in the superior court of Thurston county, such review to be in conformity with the administrative procedure act, chapter 34.04 RCW. [1971 ex.s. c 308 § 69.50.507.]

69.50.508 Education and research. (a) The state board of pharmacy may carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs it may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The board may encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this chapter, it may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this chapter;

(ii) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and,

(iii) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and,

(3) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) The board may enter into contracts for educational and research activities without performance bonds.

(d) The board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) The board may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization. [1971 ex.s. c 308 § 69.50.508.]

69.50.509 Search and seizure of controlled substances. If, upon the sworn complaint of any person, it shall be made to appear to any judge of the superior court, justice of the peace, district court judge or municipal judge that there is probable cause to believe

that any controlled substance is being used, manufactured, sold, bartered, exchanged, administered, dispensed, delivered, distributed, produced, possessed, given away, furnished or otherwise disposed of or kept in violation of the provisions of this chapter, such justice of the peace or judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to any law enforcement officer of the state, commanding him to search the premises designated and described in such complaint and warrant, and to seize all controlled substances there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for the illegal manufacture, sale, barter, exchange, administering, dispensing, delivering, distributing, producing, possessing, giving away, furnishing or otherwise disposing of such controlled substances, and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of said articles, the returns shall so state. The provisions of RCW 10.31.030 as now or hereafter amended shall apply to actions taken pursuant to this chapter. [1971 ex.s. c 308 § 69.50.509.]

ARTICLE VI MISCELLANEOUS

69.50.601 Pending proceedings. (a) Prosecution for any violation of law occurring prior to May 21, 1971 is not affected or abated by this chapter. If the offense being prosecuted is similar to one set out in Article IV of this chapter, then the penalties under Article IV apply if they are less than those under prior law.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to May 21, 1971 are not affected by this chapter.

(c) All administrative proceedings pending under prior laws which are superseded by this chapter shall be continued and brought to a final determination in accord with the laws and rules in effect prior to May 21, 1971. Any substance controlled under prior law which is not listed within Schedules I through V, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) The state board of pharmacy shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to May 21, 1971 and who are registered or licensed by the state.

(e) This chapter applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following May 21, 1971. [1971 ex.s. c 308 § 69.50.601.]

69.50.602 Continuation of rules. Any orders and rules promulgated under any law affected by this chapter and in effect on May 21, 1971 and not in conflict with it continue in effect until modified, superseded or repealed. [1971 ex.s. c 308 § 69.50.602.]

69.50.603 Uniformity of interpretation. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it. [1971 ex.s. c 308 § 69.50.603.]

69.50.604 Short title. This chapter may be cited as the Uniform Controlled Substances Act. [1971 ex.s. c 308 § 69.50.604.]

69.50.605 Severability—1971 ex.s. c 308. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [1971 ex.s. c 308 § 69.50.605.]

69.50.606 Repealers. The laws specified below are repealed except with respect to rights and duties which matured, penalties which were incurred and proceedings which were begun before the effective date of this act:

(1) Section 2072, Code of 1881, section 418, chapter 249, Laws of 1909, section 4, chapter 205, Laws of 1963 and RCW 9.91.030;

(2) Section 69.33.220, chapter 27, Laws of 1959, section 7, chapter 256, Laws of 1969 ex. sess. and RCW 69.33.220;

(3) Sections 69.33.230 through 69.33.280, chapter 27, Laws of 1959 and RCW 69.33.230 through 69.33.280;

(4) Section 69.33.290, chapter 27, Laws of 1959, section 1, chapter 97, Laws of 1959 and RCW 69.33.290;

(5) Section 69.33.300, chapter 27, Laws of 1959, section 8, chapter 256, Laws of 1969 ex. sess. and RCW 69.33.300;

(6) Sections 69.33.310 through 69.33.400, chapter 27, Laws of 1959 and RCW 69.33.310 through 69.33.400;

(7) Section 69.33.410, chapter 27, Laws of 1959, section 20, chapter 38, Laws of 1963 and RCW 69.33.410;

(8) Sections 69.33.420 through 69.33.440, 69.33.900 through 69.33.950, chapter 27, Laws of 1959 and RCW 69.33.420 through 69.33.440, 69.33.900 through 69.33.950;

(9) Section 255, chapter 249, Laws of 1909 and RCW 69.40.040;

(10) Section 1, chapter 6, Laws of 1939, section 1, chapter 29, Laws of 1939, section 1, chapter 57, Laws of 1945, section 1, chapter 24, Laws of 1955, section 1, chapter 49, Laws of 1961, section 1, chapter 71, Laws of 1967, section 9, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.060;

(11) Section 1, chapter 23, Laws of 1955, section 2, chapter 49, Laws of 1961, section 2, chapter 71, Laws of 1967 and RCW 69.40.061;

(12) Section 21, chapter 38, Laws of 1963 and RCW 69.40.063;

(13) Section 2, chapter 6, Laws of 1939, section 23, chapter 38, Laws of 1963, section 10, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.070;

(14) Section 12, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.075;

- (15) Section 1, chapter 205, Laws of 1963 and RCW 69.40.080;
- (16) Section 2, chapter 205, Laws of 1963 and RCW 69.40.090;
- (17) Section 3, chapter 205, Laws of 1963 and RCW 69.40.100;
- (18) Section 11, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.110;
- (19) Section 1, chapter 33, Laws of 1970 ex. sess. and RCW 69.40.120; and
- (20) Section 1, chapter 80, Laws of 1970 ex. sess. [1971 ex.s. c 308 § 69.50.606.]

69.50.607 Effective date—1971 ex.s. c 308. 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. [1971 ex.s. c 308 § 69.50.607.]

Effective date—1971 ex.s. c 308: The effective date of 1971 ex.s. c 308 was May 21, 1971.

69.50.608 Legislative direction. This act shall constitute a new chapter 69.50 RCW in Title 69 RCW. [1971 ex.s. c 308 § 69.50.608.]

**Chapter 69.54
DRUG AND ALCOHOL REHABILITATION,
EDUCATION PROGRAMS—DRUG TREATMENT
CENTERS**

Sections	
69.54.010	Purpose.
69.54.020	Definitions.
69.54.030	Drug treatment centers—Application for certification—Approval.
69.54.040	Programs for rehabilitation and education—Establishment—Rules and regulations—Contracts with other agencies, individuals.
69.54.050	Agreements pursuant to interlocal cooperation act authorized.
69.54.060	Consent to counseling, care, treatment or rehabilitation—Liability for expenses.
69.54.070	Confidentiality.
69.54.080	Confidentiality—Exception as to statistical or other substantive information.
69.54.090	Records and accounts—Availability to state and federal drug inspectors—Restrictions on use.

69.54.010 Purpose. It is the purpose of this chapter and RCW 71.24.020 and 71.24.030 to provide the financial assistance necessary to enable the department of social and health services to offer a meaningful program of rehabilitation for those persons suffering problems related to narcotic drugs, dangerous drugs, and alcohol and to develop a community educational program as to those problems for the benefit of the state's population generally. Such programs can develop in the people of this state a knowledge of the problems caused by alcohol and drug abuse, an acceptance of responsibility for alcohol and drug related problems, an understanding of the causes and consequences of the use and abuse of alcohol and drugs, and thus may prevent many problems from occurring.

It is the further purpose of this chapter and RCW 71.24.020 and 71.24.030 to provide for qualified drug

treatment centers approved by the department of social and health services. [1971 ex.s. c 304 § 1.]

69.54.020 Definitions. The following words and phrases shall have the following meaning when used in this chapter and RCW 71.24.020 and 71.24.030:

- (1) "Secretary" shall mean the secretary of the department of social and health services.
- (2) "Department" shall mean the department of social and health services.
- (3) "Drug and alcohol rehabilitation program" shall mean the program developed by the department of social and health services to aid persons suffering problems related to narcotic drugs, dangerous drugs, and alcohol.
- (4) "Drug and alcohol educational program" shall mean the program developed by the department of social and health services outside of the kindergarten through twelve programs in the schools to educate the people of this state relative to the use and abuse of narcotic drugs, dangerous drugs and alcohol, and the prevention and consequences thereof.
- (5) "Drug treatment center" shall mean any organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of persons using narcotic drugs or dangerous drugs. [1971 ex.s. c 304 § 2.]

69.54.030 Drug treatment centers—Application for certification—Approval. Every drug treatment center in this state shall apply to the secretary of social and health services for certification as an approved drug treatment center.

The secretary of social and health services shall issue application forms which shall require the following, where applicable:

- (1) The name and address of the applicant drug treatment center;
- (2) The name of the director or head of such drug treatment center;
- (3) The names of the members of the board of directors or sponsors of such drug treatment center;
- (4) The names and addresses of all physicians affiliated with such drug treatment center;
- (5) A short description of the nature of treatment and/or rehabilitation used by such drug treatment center; and the qualifications of staff to employ such treatment and/or rehabilitation methods;
- (6) The source of funds used to finance the activities of such drug treatment center;
- (7) Any other information required by rule or regulation of the secretary of social and health services pertaining to the qualifications of such drug treatment center.

The secretary of social and health services may either grant or deny approval or revoke or suspend approval previously granted after investigation to ascertain whether or not such center is adequate to the care, treatment, and rehabilitation of such persons who have voluntarily submitted themselves to the care of such center; such grant, denial or revocation of approval shall be in accordance with standards as set forth in rules and regulations promulgated by the secretary.

Such approval shall be effective for one calendar year from the date of such approval. Renewal of approval shall be made in accordance with the provisions of this section for initial approval and in accordance with the standards set forth in rules and regulations promulgated by the secretary. [1971 ex.s. c 304 § 3.]

69.54.040 Programs for rehabilitation and education—Establishment—Rules and regulations—Contracts with other agencies, individuals. The secretary shall establish within the department a program designed to aid and rehabilitate persons suffering from problems relating to narcotic drugs, dangerous drugs, and alcohol. Without duplicating, and in coordination with the programs established by the state superintendent of public instruction, the secretary shall establish community educational programs outside of the kindergarten through twelve programs in the schools relating to alcohol and drug use and abuse. The secretary is authorized to promulgate rules and regulations pursuant to chapter 34.04 RCW to carry out the provisions and purposes of this chapter and RCW 71.24.020 and 71.24.030 and is authorized to contract, cooperate and coordinate with other public or private agencies or individuals for such purposes. [1971 ex.s. c 304 § 4.]

69.54.050 Agreements pursuant to interlocal cooperation act authorized. Pursuant to the provisions of the Interlocal Cooperation Act, chapter 39.34 RCW, the department may enter into agreements as provided therein to accomplish the purposes of this chapter and RCW 71.24.020 and 71.24.030. [1971 ex.s. c 304 § 5.]

69.54.060 Consent to counseling, care, treatment or rehabilitation—Liability for expenses. Any person fourteen years of age or older may give consent for himself to the furnishing of counseling, care, treatment or rehabilitation by an approved drug treatment center or person licensed or certified by the state related to conditions and problems caused by drug or alcohol abuse. Consent of the parent, parents, or legal guardian of a person less than eighteen years of age shall not be necessary to authorize such care, except that such person shall not become a resident of such treatment center without parental permission. The parent, parents or legal guardian of a person less than eighteen years of age shall not be liable for payment of care for such persons pursuant to this chapter and RCW 71.24.020 and 71.24.030, unless they have joined in the consent to such counseling, care, treatment or rehabilitation. [1971 ex.s. c 304 § 8.]

69.54.070 Confidentiality. When an individual submits himself for care, treatment, counseling, or rehabilitation to any organization, institution or corporation, public or private, approved pursuant to this chapter and RCW 71.24.020 and 71.24.030, or any person licensed or certified by the state whose principal function is the care, treatment, counseling or rehabilitation of alcohol abusers or users of narcotic or dangerous drugs, or the providing of medical, psychological or social counseling or treatment, notwithstanding any other provision of

law, such individual is hereby guaranteed confidentiality. No such person, organization, institution or corporation or their agents acting in the scope and course of their duties, providing such care, treatment, counseling or rehabilitation shall divulge nor shall they be required to provide any specific information concerning individuals being cared for, treated, counseled or rehabilitated, nor shall pharmacists or their agents provide such information when or if they become aware of or receive such information when requested to or for the purpose of providing products or performing services relevant to said care, treatment, counseling or rehabilitation. Should any person, organization, institution or corporation, or their agents, breach confidentiality as provided for in this section, such information and any product thereof shall not be admissible as evidence or be considered in any criminal proceeding. The fact of an individual of authorized age being cared for, treated, counseled or rehabilitated pursuant to this chapter and RCW 71.24.020 and 71.24.030 shall likewise be held confidential and shall not be admissible as evidence or be considered in any criminal proceeding.

Any confidentiality provided for by this section may be waived by the individual, provided such waiver is freely and voluntarily made, and with full prior information as to the consequences thereof. [1971 ex.s. c 304 § 9.]

69.54.080 Confidentiality—Exception as to statistical or other substantive information. Nothing contained in this chapter and RCW 71.24.020 and 71.24.030 shall prohibit or be construed to prohibit the divulging or providing of statistical or other substantive information pertaining to care, treatment, counseling or rehabilitation, pursuant to this chapter and RCW 71.24.020 and 71.24.030, so long as no individual is identified or reasonably identifiable, and individual privacy and confidentiality is retained. [1971 ex.s. c 304 § 10.]

69.54.090 Records and accounts—Availability to state and federal drug inspectors—Restrictions on use. Nothing contained in this chapter and RCW 71.24.020 and 71.24.030 shall relieve any person or firm from the requirements under federal and state drug laws and regulations for the keeping of records and the responsibility for the accountability of drugs received and dispensed. Such records, insofar as they contain confidential information under this chapter and RCW 71.24.020 and 71.24.030, shall only be available to state and federal drug inspectors who shall not divulge such information as is contained in these records, including the identification of individuals, except (1) upon subpoena in a court or administrative proceeding to which the person to whom such prescription, orders or other records relate is a party, or (2) when the information reasonably leads to the conclusion that there has been a violation of *RCW 69.33.380 or 69.40.090, then the information may be referred to other law enforcement officers. [1971 ex.s. c 304 § 11.]

*Reviser's note: "RCW 69.33.380" and "69.40.090" were repealed by 1971 ex.s. c 308 § 69.50.606.

TITLE 70

PUBLIC HEALTH AND SAFETY

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**Chapter 70.01
GENERAL PROVISIONS**

Sections

- 70.01.010 Cooperation with federal government—Construction.
- 70.01.020 Donation of blood by person eighteen or over without parental consent authorized.

70.01.010 Cooperation with federal government—Construction. In furtherance of the policy of this state to cooperate with the federal government in the public health programs, the state board of health shall adopt such rules and regulations as may become necessary to entitle this state to participate in federal funds unless the same be expressly prohibited by law. Any section or provision of the public health laws of this state 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 funds for the various programs of public health. [1969 ex.s. c 25 § 1; 1967 ex.s. c 102 § 12.]

Severability—1967 ex.s. c 102: See note following RCW 43.20.010.

70.01.020 Donation of blood by person eighteen or over without parental consent authorized. Any person of the age of eighteen years or over shall be eligible to donate blood in any voluntary and noncompensatory blood program without the necessity of obtaining parental permission or authorization. [1969 c 51 § 1.]

**Chapter 70.05
LOCAL HEALTH DEPARTMENTS, BOARDS,
OFFICERS—REGULATIONS**

Sections

- 70.05.010 Definitions.
- 70.05.020 Cities and towns—Organization of local health boards.
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- 70.05.040 Local board of health—Chairman—Clerk—Vacancies.
- 70.05.050 Local health officer—Appointment—Term—Employment of personnel—Salary and expenses.
- 70.05.051 Local health officer—Qualifications.
- 70.05.053 Provisionally qualified local health officers—Appointment—Term—Requirements.
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- 70.05.055 Provisionally qualified local health officers—Interview—Evaluation as to qualification as local public health officer.
- 70.05.060 Powers and duties of local board of health.
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- 70.05.090 Physicians to report diseases.
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- 70.05.110 Local health officials and physicians to report contagious diseases.
- 70.05.120 Violations—Remedies—Penalties.
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- 70.05.140 Expenses of providing public health services—Payment by counties and cities—Procedure on failure to pay.
- 70.05.150 Contracts for sale or purchase of health services authorized.

Health districts: Chapter 70.46 RCW.

70.05.010 Definitions. For the purposes of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 and unless the context thereof clearly indicates to the contrary:

(1) "Local health departments" means the city, town, county or district which provides public health services to persons within the area;

(2) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the city, town, county or district public health department;

(3) "Local board of health" means the city, town, county or district board of health.

(4) "Health district" means all territory encompassed within a single county and all cities and towns therein except cities with a population of over one hundred thousand, or all the territory consisting of one or more counties and all the cities and towns in all of the combined counties except cities of over one hundred thousand population which have been combined and organized pursuant to the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090: *Provided*, That cities with a population of over one hundred thousand may be included in a health district as provided in RCW 70.46.040. [1967 ex.s. c 51 § 1.]

Severability—1967 ex.s. c 51: "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 51 § 24.] This applies to chapter 70.05 RCW and RCW 70.46.020 through 70.46.090.

70.05.020 Cities and towns—Organization of local health boards. The governing body of every city or town in this state, except where such city or town is a part of a county health department, a health district, or is purchasing health services under a contract as authorized by chapter 70.05 RCW and RCW 70.46.020 through 70.46.090, shall hereafter organize as a local board of health or shall appoint a local board of health from its

members of at least three persons who shall organize as a local board of health for such city or town. [1967 ex.s. c 51 § 2.]

70.05.030 Counties—Board of county commissioners to constitute local health board—Jurisdiction. The board of county commissioners of each and every county in this state, except where such county is a part of a health district or is purchasing services under a contract as authorized by chapter 70.05 RCW and RCW 70.46-.020 through 70.46.090, shall constitute the local board of health for such county, and said local board of health's jurisdiction shall be coextensive with the boundaries of said county, except that nothing herein contained shall give said board jurisdiction in cities of over one hundred thousand population or in such other cities and towns as are providing health services which meet health standards pursuant to RCW 70.46.090. [1967 ex.s. c 51 § 3.]

70.05.040 Local board of health—Chairman—Clerk—Vacancies. The local board of health shall elect a chairman and may appoint a clerk, and shall appoint a local health officer pursuant to RCW 70.05-.050. Vacancies on the local board of health shall be filled by appointment within thirty days and made in the same manner as was the original appointment. At the first meeting of the local board of health, the members shall elect a chairman to serve for a period of one year. [1967 ex.s. c 51 § 4.]

70.05.050 Local health officer—Appointment—Term—Employment of personnel—Salary and expenses. Each local board of health shall appoint a local health officer who shall be an experienced physician licensed to practice medicine and surgery or osteopathy and surgery in this state and who is qualified or provisionally qualified in accordance with the standards prescribed in RCW 70.05.051 through 70.05.055 to hold the office of local health officer. No term of office shall be established for the local health officer but he shall not be removed until after notice is given him, and an opportunity for a hearing before the board as to the reason for his removal. He shall act as executive secretary to, and administrative officer for the local board of health. He shall also be empowered to employ such technical and other personnel as approved by the local board of health. The local health officer shall be paid such salary and allowed such expenses as shall be determined by the local board of health. [1969 ex.s. c 114 § 1; 1967 ex.s. c 51 § 9.]

70.05.051 Local health officer—Qualifications. The following persons holding licenses as required by RCW 70.05.050 shall be deemed qualified to hold the position of local health officer:

- (1) Persons holding the degree of master of public health or its equivalent;
- (2) Persons not meeting the requirements of subsection (1) of this section, who upon August 11, 1969 are currently employed in this state as a local health officer

and whom the state director of health recommends in writing to the local board of health as qualified; and

- (3) Persons qualified by virtue of completing three years of service as a provisionally qualified officer pursuant to RCW 70.05.053 through 70.05.055. [1969 ex.s. c 114 § 2.]

70.05.053 Provisionally qualified local health officers—Appointment—Term—Requirements. Persons holding licenses required by RCW 70.05.050 but not meeting any of the requirements for qualification prescribed by RCW 70.05.051 may be appointed by local health boards as provisionally qualified local health officers for a maximum period of three years upon the following conditions and in accordance with the following procedure:

- (1) He shall participate in an in-service orientation to the field of public health as provided in RCW 70.05.054, and

- (2) He shall satisfy the director pursuant to the periodic interviews prescribed by RCW 70.05.055 that he has successfully completed such in-service orientation and is conducting such program of good health practices as may be required by the jurisdictional area concerned. [1969 ex.s. c 114 § 3.]

70.05.054 Provisionally qualified local health officers—In-service public health orientation program. The director of health shall provide an in-service public health orientation program for the benefit of provisionally qualified local health officers.

Such program shall consist of—

- (1) A three months course in public health training conducted by the director either in the state department of health, in a county and/or city health department, in a local health district, or in an institution of higher education; or

- (2) An on-the-job, self-training program pursuant to a standardized syllabus setting forth the major duties of a local health officer including the techniques and practices of public health principles expected of qualified local health officers: *Provided*, That each provisionally qualified local health officer may choose which type of training he shall pursue. [1969 ex.s. c 114 § 4.]

70.05.055 Provisionally qualified local health officers—Interview—Evaluation as to qualification as local public health officer. Each year, on a date which shall be as near as possible to the anniversary date of appointment as provisional local health officer, the state director of health or his designee shall personally visit such provisional officer's office for a personal review and discussion of the activity, plans, and study being carried on relative to the provisional officer's jurisdictional area: *Provided*, That the third such interview shall occur three months prior to the end of the three year provisional term. A standardized checklist shall be used for all such interviews, but such checklist shall not constitute a grading sheet or evaluation form for use in the ultimate decision of qualification of the provisional appointee as a public health officer.

Copies of the results of each interview shall be supplied to the provisional officer within two weeks following each such interview.

Following the third such interview, the state director of health shall evaluate the provisional local health officer's in-service performance and shall notify such officer by certified mail of his decision whether or not to qualify such officer as a local public health officer. Such notice shall be mailed at least sixty days prior to the third anniversary date of provisional appointment. Failure to so mail such notice shall constitute a decision that such provisional officer is qualified. [1969 ex.s. c 114 § 5.]

70.05.060 Powers and duties of local board of health. Each local board of health shall have supervision over all matters pertaining to the preservation of the life and health of the people within its jurisdiction and shall:

(1) Enforce through the local health officer the public health statutes of the state and rules and regulations promulgated by the state board of health and the state director of health;

(2) Supervise the maintenance of all health and sanitary measures for the protection of the public health within its jurisdiction;

(3) Enact such local rules and regulations as are necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof;

(4) Provide for the control and prevention of any dangerous, contagious or infectious disease within the jurisdiction of the local health department;

(5) Provide for the prevention, control and abatement of nuisances detrimental to the public health;

(6) Make such reports to the state board of health through the local health officer as the state board of health may require; and

(7) Establish fee schedules for issuing or renewing licenses or permits or for such other services as are authorized by the law and the rules and regulations of the state board of health: *Provided*, That such fees for services shall not exceed the actual cost of providing any such services. [1967 ex.s. c 51 § 10.]

70.05.070 Local health officer—Powers and duties. The local health officer shall:

(1) Enforce the public health statutes of the state, rules and regulations of the state board of health and the state director of health, and all local health rules, regulations and ordinances within his jurisdiction;

(2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his jurisdiction;

(3) Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his jurisdiction;

(4) Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his jurisdiction;

(5) Prevent, control or abate nuisances which are detrimental to the public health;

(6) Attend all conferences called by the state director of health or his authorized representative;

(7) Collect such fees as are established by the state board of health or the local board of health for the issuance or renewal of licenses or permits or such other fees as may be authorized by law or by the rules and regulations of the state board of health.

(8) Take such measures as he deems necessary in order to promote the public health, to participate in the establishment of health educational or training activities, and to authorize the attendance of employees of the local health department or individuals engaged in community health programs related to or part of the programs of the local health department. [1967 ex.s. c 51 § 12.]

70.05.080 Local health officer—Failure to appoint—Procedure. In case of the refusal or neglect of any local board of health to appoint a local health officer after a vacancy exists, the state director of health may appoint a local health officer and fix the compensation and the local health officer so appointed shall have the same duties, powers and authority as though appointed by the local boards of health. Such local health officer shall serve until such time as the local board of health appoints a qualified individual in his place. The board shall be authorized to appoint an acting health officer to serve whenever the health officer is absent or incapacitated and unable to fulfill his responsibilities under the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090. [1967 ex.s. c 51 § 13.]

70.05.090 Physicians to report diseases. Whenever any physician shall attend any person sick with any dangerous contagious or infectious disease, or with any diseases required by the state board of health to be reported, he shall, within twenty-four hours, give notice thereof to the local health officer within whose jurisdiction such sick person may then be or to the state department of health in Olympia. [1967 ex.s. c 51 § 14.]

70.05.100 Who determines character of disease. In case of the question arising as to whether or not any person is affected or is sick with a dangerous, contagious or infectious disease, the opinion of the local health officer shall prevail until the state department of health can be notified, and then the opinion of the executive officer of the state department of health, or any physician he may appoint to examine such case, shall be final. [1967 ex.s. c 51 § 15.]

70.05.110 Local health officials and physicians to report contagious diseases. It shall be the duty of the local board of health, health authorities or officials, and of physicians in localities where there are no local health authorities or officials, to report to the state board of health, promptly upon discovery thereof, the existence of any one of the following diseases which may come under their observation, to wit: Asiatic cholera, yellow fever, smallpox, scarlet fever, diphtheria, typhus, typhoid fever, bubonic plague or leprosy, and of such other contagious or infectious diseases as the state board may from time to time specify. [1967 ex.s. c 51 § 16.]

70.05.120 Violations—Remedies—Penalties. Any local health officer who shall refuse or neglect to obey or enforce the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 or the rules, regulations or orders of the state board of health or who shall refuse or neglect to make prompt and accurate reports to the state board of health, may be removed as local health officer by the state board of health and shall not again be reappointed except with the consent of the state board of health. Any person may complain to the state board of health concerning the failure of the local health officer to carry out the laws or the rules and regulations concerning public health, and the state board of health shall, if a preliminary investigation so warrants, call a hearing to determine whether the local health officer is guilty of the alleged acts. Such hearings shall be held pursuant to the provisions of chapter 34.04 RCW, and the rules and regulations of the state board of health adopted thereunder.

Any member of a local board of health who shall violate any of the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 or refuse or neglect to obey or enforce any of the rules, regulations or orders of the state board of health made for the prevention, suppression or control of any dangerous contagious or infectious disease or for the protection of the health of the people of this state, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars. Any physician who shall refuse or neglect to report to the proper health officer within twelve hours after first attending any case of contagious or infectious disease or any diseases required by the state board of health to be reported or any case suspicious of being one of such diseases, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars for each case that is not reported.

Any person violating any of the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 or violating or refusing or neglecting to obey any of the rules, regulations or orders made for the prevention, suppression and control of dangerous contagious and infectious diseases by the local board of health or local health officer or state board of health, or who shall leave any isolation hospital or quarantined house or place without the consent of the proper health officer or who evades or breaks quarantine or conceals a case of contagious or infectious disease or assists in evading or breaking any quarantine or concealing any case of contagious or infectious disease, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or to imprisonment in the county jail not to exceed ninety days or to both fine and imprisonment. [1967 ex.s. c 51 § 17.]

70.05.130 Expenses of enforcing laws and regulations. All expenses incurred by the state, health district, or county in carrying out the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 or any other public health law, or the rules and regulations of

the state department of health enacted under such laws, shall be paid by the county or city by which or in behalf of which such expenses shall have been incurred and such expenses shall constitute a claim against the general fund as provided herein. [1967 ex.s. c 51 § 18.]

70.05.135 Treasurer—District funds—Contributions by counties and cities. See RCW 70.46.080.

70.05.140 Expenses of providing public health services—Payment by counties and cities—Procedure on failure to pay. See RCW 70.46.085.

70.05.150 Contracts for sale or purchase of health services authorized. In addition to powers already granted them, any city, town, county, district or local health department may contract for either the sale or purchase of any or all health services from any local health department: *Provided*, That such contract shall require the approval of the state board of health. [1967 ex.s. c 51 § 22.]

**Chapter 70.08
COMBINED CITY-COUNTY HEALTH
DEPARTMENTS**

Sections	
70.08.010	Combined city-county health departments—Establishment.
70.08.020	Director of public health—Powers and duties.
70.08.030	Qualifications.
70.08.040	Appointment—Salary—Terms of office.
70.08.050	May act as health officer for other cities or towns.
70.08.060	Director of public health shall be registrar of vital statistics.
70.08.070	Employees may be included in city civil service, retirement plans.
70.08.080	Pooling of funds.
70.08.090	Other cities or agencies may contract for services.
70.08.100	Termination of agreement to operate combined city-county health department.
70.08.110	Prior expenditures in operating combined health department ratified.

Control of cities and towns over water pollution: Chapter 35.88 RCW.

70.08.010 Combined city-county health departments—Establishment. Any city with one hundred thousand or more population and the county in which it is located, are authorized, as shall be agreed upon between the respective governing bodies of such city and said county, to establish and operate a combined city and county health department, and to appoint the director of public health as hereinafter provided. The combination of such city and county health department under this chapter shall be effective whenever the governing body of the city with one hundred thousand or more population shall pass an ordinance and the board of county commissioners of the county in which it is located shall pass a resolution declaring intention to operate a combined health department in accordance with agreements made between their respective governing bodies. [1949 c 46 § 1; Rem. Supp. 1949 § 6099-30.]

70.08.020 Director of public health—Powers and duties. The director of public health is authorized to and shall exercise all powers and perform all duties by law vested in the county health officer, and is authorized to and shall exercise all powers and perform all duties by law vested in the health officer of said city of one hundred thousand population or more. [1949 c 46 § 2; Rem. Supp. 1949 § 6099–31.]

70.08.030 Qualifications. The director of public health, under this chapter shall be a qualified physician or surgeon having graduated at least five years prior to appointment, shall in addition to his professional degree also hold the degree of master of public health or its equivalent, and shall have had at least three years' practical experience in public health administrative work. He shall not engage in the private practice of his profession during his tenure of office. He shall not be included in the classified civil service of the said city or the said county. [1949 c 46 § 3; Rem. Supp. 1949 § 6099–32.]

70.08.040 Appointment—Salary—Terms of office. The director of public health under this chapter shall be appointed by the mayor of the city of one hundred thousand population or more, such appointment to be effective only upon a majority vote confirmation of each governing body of said city and said county. He shall be paid such salary and allowed such expenses as shall be determined annually by the governing bodies of said city and said county. He shall hold office for an indefinite term and may be removed at any time by the mayor of said city only for cause shown and after public hearing on charges reduced to writing, a copy of such charges having first been filed ten days prior to such public hearing with the governing bodies of said city and of said county. [1949 c 46 § 4; Rem. Supp. 1949 § 6099–33.]

70.08.050 May act as health officer for other cities or towns. Nothing in this chapter shall prohibit the director of public health as provided herein from acting as health officer for any other city or town within the county, nor from acting as health officer in any adjoining county or any city or town within such county having a contract or agreement as provided in RCW 70.08.090: *Provided, however,* That before being appointed health officer for such adjoining county, the state director of health shall first give his approval thereto. [1949 c 46 § 8; Rem. Supp. 1949 § 6099–37.]

70.08.060 Director of public health shall be registrar of vital statistics. The director of public health under this chapter shall be registrar of vital statistics for all cities and counties under his jurisdiction and shall conduct such vital statistics work in accordance with the same laws and/or rules and regulations pertaining to vital statistics for a city of the first class. [1961 ex.s. c 5 § 4; 1949 c 46 § 9; Rem. Supp. 1949 § 6099–38.]

Vital statistics: Chapter 70.58 RCW.

70.08.070 Employees may be included in city civil service, retirement plans. All employees of the combined

city and county health department except those already covered by civil service and retirement plans, may upon passage of an ordinance by the city, be included in the civil service and retirement plans of such city: *Provided,* That residential requirements for such positions shall be coextensive with the county boundaries: *Provided further,* That the county is authorized to pay such parts of the expense of operating and maintaining such civil service and retirement system and to contribute to the retirement fund in behalf of employees such sums as may be agreed upon between the governing bodies of such city and county. [1949 c 46 § 5; Rem. Supp. 1949 § 6099–34.]

70.08.080 Pooling of funds. The city by ordinance, and the county by resolution, under this chapter may pool all or any part of their respective funds available for public health purposes, in the office of the city treasurer in a special pooling fund to be established in accordance with agreements between the governing bodies of said city and county and which shall be expended for the combined health department. [1949 c 46 § 6; Rem. Supp. 1949 § 6099–35.]

70.08.090 Other cities or agencies may contract for services. Any other city in said county, other governmental agency or any charitable or health agency may by contract or by agreement with the governing bodies of the combined health department receive public health services. [1949 c 46 § 7; Rem. Supp. 1949 § 6099–36.]

70.08.100 Termination of agreement to operate combined city-county health department. Agreement to operate a combined city and county health department made under this chapter may after two years from the date of such agreement, be terminated by either party at the end of any calendar year upon notice in writing given at least six months prior thereto. The termination of such agreement shall not relieve either party of any obligations to which it has been previously committed. [1949 c 46 § 10; Rem. Supp. 1949 § 6099–39.]

70.08.110 Prior expenditures in operating combined health department ratified. Any expenditures heretofore made by a city of one hundred thousand population or more, and by the county in which it is located, not made fraudulently and which were within the legal limits of indebtedness, towards the expense of maintenance and operation of a combined health department, are hereby legalized and ratified. [1949 c 46 § 11; Rem. Supp. 1949 § 6099–40.]

Chapter 70.10 COMPREHENSIVE COMMUNITY HEALTH CENTERS

Sections	
70.10.010	Declaration of policy—Combining health services—State authorized to cooperate with other entities in constructing.
70.10.020	"Comprehensive community health center" defined.
70.10.030	Authorization to apply for and administer federal and/or state funds.

- 70.10.040 Application for federal or state funds for construction of facility as part of or separate from health center—
Processing and approval by administering agencies—
Decision on use as part of comprehensive health center.
- 70.10.050 Application for federal or state funds for construction of facility as part of or separate from health center—
Cooperation between agencies in standardizing application procedures and forms.
- 70.10.060 Adoption of rules and regulations—Liberal construction of chapter.

Community mental health centers: Chapter 71.16 RCW.

Community mental health services act: Chapter 71.24 RCW.

Mental health and retardation services, interstate contracts: Chapter 71.28 RCW.

70.10.010 Declaration of policy—Combining health services—State authorized to cooperate with other entities in constructing. It is declared to be the policy of the legislature of the state of Washington that, wherever feasible, community health, mental health and mental retardation services shall be combined within single facilities in order to provide maximum utilization of available funds and personnel, and to assure the greatest possible coordination of such services for the benefit of those requiring them. It is further declared to be the policy of the legislature to authorize the state to cooperate with counties, cities, and other municipal corporations in order to encourage them to take such steps as may be necessary to construct comprehensive community health centers in communities throughout the state. [1967 ex.s. c 4 § 1.]

70.10.020 "Comprehensive community health center" defined. The term "comprehensive community health center" as used in this chapter shall mean a health facility housing community health, mental health, and mental retardation services. [1967 ex.s. c 4 § 2.]

70.10.030 Authorization to apply for and administer federal and/or state funds. The several agencies of the state authorized to administer within the state the various federal acts providing federal moneys to assist in the cost of establishing community health, mental health, and mental retardation facilities, are authorized to apply for and disburse federal grants, matching funds, or other funds, including gifts or donations from any source, available for use by counties, cities, other municipal corporations or nonprofit corporations. Upon application, these agencies shall also be authorized to distribute such state funds as may be appropriated by the legislature for such local construction projects: *Provided*, That where state funds have been appropriated to assist in covering the cost of constructing a comprehensive community health center, or a community health, mental health, or mental retardation facility, and where any county, city, other municipal corporation or nonprofit corporation has submitted an approved application for such state funds, then, after any applicable federal grant has been deducted from the total cost of construction, the state agency or agencies in charge of each program may allocate to such applicant an amount not to exceed fifty percent of that particular program's contribution toward the balance of remaining construction costs. [1967 ex.s. c 4 § 3.]

70.10.040 Application for federal or state funds for construction of facility as part of or separate from health center—Processing and approval by administering agencies—Decision on use as part of comprehensive health center. Any application for federal or state funds to be used for construction of the community health, mental health, or mental retardation facility, which will be part of the comprehensive community health center as defined in RCW 70.10.020, shall be separately processed and approved by the state agency which has been designated to administer the particular federal or state program involved. Any application for federal or state funds for a construction project to establish a community health, mental health, or mental retardation facility not part of a comprehensive health center shall be processed by the state agency which is designated to administer the particular federal or state program involved. This agency shall also forward a copy of the application to the other agency or agencies designated to administer the program or programs providing funds for construction of the facilities which make up a comprehensive health center. The agency or agencies receiving this copy of the application shall have a period of time not to exceed sixty days in which to file a statement with the agency to which the application has been submitted and to any statutory advisory council or committee which has been designated to advise the administering agency with regard to the program, stating that the proposed facility should or should not be part of a comprehensive health center. [1967 ex.s. c 4 § 4.]

70.10.050 Application for federal or state funds for construction of facility as part of or separate from health center—Cooperation between agencies in standardizing application procedures and forms. The several state agencies processing applications for the construction of comprehensive health centers for community health, mental health, or mental retardation facilities shall cooperate to develop general procedures to be used in implementing the statute and to attempt to develop application forms and procedures which are as nearly standard as possible, after taking cognizance of the different information required in the various programs, to assist applicants in applying to various state agencies. [1967 ex.s. c 4 § 5.]

70.10.060 Adoption of rules and regulations—Liberal construction of chapter. In furtherance of the legislative policy to authorize the state to cooperate with the federal government in facilitating the construction of comprehensive community health centers, the state agencies involved shall adopt such rules and regulations as may become necessary to entitle the state and local units of government to share in federal grants, matching funds, or other funds, unless the same be expressly prohibited by this chapter. Any section or provision of this chapter susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling the state and local units of government to receive federal grants, matching funds or other funds for the construction of comprehensive community health centers. [1967 ex.s. c 4 § 6.]

**Chapter 70.12
PUBLIC HEALTH FUNDS**

Sections

COUNTY FUNDS

- 70.12.010 County tax levy for public health.
70.12.015 State director may expend funds in counties.
70.12.020 Expenditures authorized.
70.12.025 County funds for public health.

PUBLIC HEALTH POOLING FUND

- 70.12.030 Public health pooling fund authorized—"Health district" defined.
70.12.040 Fund, how maintained and disbursed.
70.12.050 Expenditures from fund.
70.12.060 Expenditures geared to budget.
70.12.070 Fund subject to audit and check by state.

COUNTY FUNDS

70.12.010 County tax levy for public health. (Expires January 1, 1977.) Each board of county commissioners shall annually budget and levy as a tax for public health work in its county a sum equal to the amount which would be raised by a levy of nine cents per thousand dollars of assessed value against the taxable property in the county, but nothing herein contained shall prohibit a county from obtaining said public health funds from any other source of county revenue or from budgeting additional sums for public health work.

This section shall expire on January 1, 1977. [1975 1st ex.s. c 291 § 1; 1973 2nd ex.s. c 4 § 4; 1973 1st ex.s. c 195 § 78; 1970 ex.s. c 47 § 6; 1943 c 163 § 1; 1939 c 191 § 1; Rem. Supp. 1943 § 3997-2a.]

Reviser's note: RCW 70.12.010 was repealed by 1975 1st ex.s. c 291 § 24, effective January 1, 1977.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Emergency—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.

70.12.015 State director may expend funds in counties. The director of the state department of health is hereby authorized to apportion and expend such sums as he shall deem necessary for public health work in the counties of the state, from the appropriations made to the state department of health for county public health work. [1939 c 191 § 2; RRS § 6001-1. Formerly RCW 70.12.080.]

70.12.020 Expenditures authorized. Each board of county commissioners is hereby authorized and directed to expend the sum budgeted under *this act, or so much thereof as may be necessary, for public health work. [1939 c 191 § 3; RRS § 6094-1.]

***Reviser's note:** The language "this act" appears in 1939 c 191 codified as RCW 70.12.010 through 70.12.020.

70.12.025 County funds for public health. (Effective January 1, 1977.) Each county legislative authority shall annually budget and appropriate a sum for public health work. [1975 1st ex.s. c 291 § 2.]

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

PUBLIC HEALTH POOLING FUND

70.12.030 Public health pooling fund authorized—"Health district" defined. Any county, first class city or health district is hereby authorized and empowered to create a "public health pooling fund", hereafter called the "fund", for the efficient management and control of all moneys coming to such county, first class city or district for public health purposes.

"Health district" as used herein may mean all territory consisting of one or more counties and all cities with a population of one hundred thousand or less, and towns therein. [1945 c 46 § 1; 1943 c 190 § 1; Rem. Supp. 1945 § 6099-1.]

70.12.040 Fund, how maintained and disbursed. Any such fund may be established in the county treasurer's office or the city treasurer's office of a first class city according to the type of local health department organization existing.

In a district composed of more than one county, the county treasurer of the county having the largest population shall be the custodian of the fund, and the county auditor of said county shall keep the record of receipts and disbursements; and shall draw and the county treasurer shall honor and pay all such warrants.

Into any such fund so established may be paid:

- (1) All grants from any state fund for county public health work;
- (2) All county funds collected by county levy as set forth in RCW 70.12.010;
- (3) Any county current expense funds appropriated for the health department;
- (4) Any other money appropriated by the county for health work;
- (5) City funds appropriated for the health department;
- (6) All moneys received from any governmental agency, local, state or federal which may contribute to the local health department; and
- (7) Any contributions from any charitable or voluntary agency or contributions from any individual or estate.

Any school district may contract in writing for health services with the health department of the county, first class city or health district, and place such funds in the public health pooling fund in accordance with the contract. [1945 c 46 § 2; 1943 c 190 § 2; Rem. Supp. 1945 § 6099-2.]

70.12.050 Expenditures from fund. All expenditures in connection with salaries, wages and operations incurred in carrying on the health department of the county, first class city or health district shall be paid out of such fund. [1945 c 46 § 3; 1943 c 190 § 3; Rem. Supp. 1945 § 6099-3.]

70.12.060 Expenditures geared to budget. Any fund established as herein provided shall be expended so as to

make the expenditures thereof agree with any respective appropriation period. Any accumulation in any such fund so established shall be taken into consideration when preparing any budget for the operations for the ensuing year. [1943 c 190 § 4; Rem. Supp. 1943 § 6099-4.]

70.12.070 Fund subject to audit and check by state. The public health pool fund shall be subject to audit by the division of departmental audits and shall be subject to check by the state department of health. [1943 c 190 § 5; Rem. Supp. 1943 § 6099-5.]

Chapter 70.16 HEALTH PRECAUTIONS AT SEAPORTS

Sections

70.16.010	County health board—Duties—Health officer.
70.16.020	Residence of health officer—Quarantine of vessels and passengers.
70.16.030	Disinfection of goods from infected vessels—Fees.
70.16.040	Failure to obey orders—Penalty.
70.16.050	Infected persons may be taken ashore.
70.16.060	Breaking quarantine—Penalty.
70.16.070	Entering quarantined vessel or area.
70.16.080	Quarantine flag—Display—Penalty.
70.16.090	Docking infected vessel, false declarations, etc.—Penalty.
70.16.100	Failure to move vessel to quarantine—Penalty.
70.16.110	Notification of health officers—Penalty.
70.16.120	Vessels to anchor at distance.
70.16.130	Penalty.
70.16.140	Entry of vessels against quarantine—Penalty.
70.16.150	Vessel to perform quarantine—Penalty.
70.16.160	Duty of pilots as to quarantine—Penalty.
70.16.170	City to provide quarantine flag.
70.16.180	Who may perform quarantine duties for city.
70.16.190	Expense of city quarantine.
70.16.200	Information to be furnished upon demand.

Navigation: Title 88 RCW.

Penalty for wilful exposure to contagious disease: RCW 70.54.050.

70.16.010 County health board—Duties—Health officer. The county commissioners of the several counties of the state of Washington shall be, and the same are hereby created and constituted, a board of health for said county, whose duty it shall be to make such regulations respecting the quarantine of ships or vessels prescribing in what case it shall be performed by vessels arriving at any port in said state of Washington as may be just and reasonable and the same modify or change as in their opinion the public safety requires, and the board of health so constituted shall appoint a health officer who shall before entering upon the duties of his office, give bonds with good and sufficient sureties to the county commissioners of the county where appointed, in the sum of one thousand dollars conditioned for the faithful performance of his duties as such health officer and shall be sworn before some officer qualified to administer oaths to perform the duties of his office to the best of his ability and which bond and oath shall be filed in the office of the county auditor. [1888 p 46 § 1; RRS § 6047. Formerly RCW 70.06.020, part and 70.16.010.]

Repeal—1888 p 50: "All acts and parts of acts in conflict with the provisions of this act are hereby repealed." [1888 p 50 § 15.]

Effective date—Construction—1888 p 50: "This act shall take effect and be in force from and after its passage and approval by the governor; *Provided*, that this act shall in no wise effect, modify or repeal Chapter CLXI of the code of Washington in relation to the prevention or spread of contagious diseases in cities and towns, or Chapter CLIX of said code in relation to the quarantine of vessels or any general or special municipal charter or any general law heretofore enacted upon this subject." [1888 p 50 § 16.]

The foregoing annotations apply to RCW 70.16.010 through 70.16.110 and 70.20.010 through 70.20.030.

Appointment of county health officer: RCW 70.05.030.

70.16.020 Residence of health officer—Quarantine of vessels and passengers. The health officer shall reside within the county where appointed and shall require all vessels having on board any person or persons infected with smallpox, plague, pestilential or malignant fever or other malignant, infectious or contagious diseases or who shall have been so infected during the voyage or having on board any goods reasonably supposed to have any infections of such disease to perform quarantine at some safe, suitable and convenient place selected and designated for the purpose by the board of health and order the master or other person having charge or control of such vessel to proceed with such vessel and anchor at such designated place there to remain and be purified and cleansed as he may direct, and a suitable place on shore may be prescribed and properly limited for the landing, care, treatment and purification of any person or passenger of such vessel. [1888 p 46 § 2; RRS § 6048. Formerly RCW 70.06.020, part and 70.16.020.]

70.16.030 Disinfection of goods from infected vessels—Fees. The board of health may, and it shall be their duty to seize any goods landed from any such infected vessel without the permission of the health officer and remove and keep the same until they have caused them, the said goods to be thoroughly cleansed and purified and which cleansing and purification shall be performed by or under the direction of the health officer with all possible dispatch at which time such goods shall be turned over to the care and custody of the person properly claiming the same upon payment by the person so claiming paying the expense of such removal and purification and upon the failure of the health officer to turn over to such person any such goods agreeable to the provisions of this section he shall be liable for all damages that may arise from such failure and which may be recovered by suit in any court of competent jurisdiction together with costs of suit. That the fees of the health officer shall be fixed by the board of health provided for in *this act but shall not exceed the sum of five dollars for each vessel boarded or examined in the daytime and ten dollars in the nighttime between the hours of ten p.m., and five p.m., nor the sum of fifteen dollars for fumigating a vessel which fee shall be paid [by the owner or agent of said] vessel and shall be a lien on said vessel until paid and no vessel shall receive a bill of health or clearance until such fee is paid and the health officer may recover such fee together with the cost of suit in any court having jurisdiction. [1888 p 47 § 3; RRS § 6049.]

*Reviser's note: The language "this act" refers to 1888 p 46 §§ 1 through 14 codified as RCW 70.16.010 through 70.16.110 and 70.20.010 through 70.20.030.

70.16.040 Failure to obey orders—Penalty. Any owner, master, supercargo officer, seaman, consignee or any other person who shall refuse or neglect to obey the orders and regulations of the board of health in regard to such quarantine or the purification and cleansing of such vessel shall be punished by fine not exceeding one thousand dollars or by imprisonment not exceeding three months, or both. [1888 p 47 § 4; RRS § 6050.]

70.16.050 Infected persons may be taken ashore. Any person sick on board any such vessel may be sent on shore by said health officer at some place appointed and limited for the purpose and shall there be maintained, provided and cleansed by or under the direction of the health officer at the expense of such sick or infected person if able, otherwise at the expense of the vessel in which the person or persons may have been brought into any of the ports or waters of the state of Washington or bordering on said state. [1888 p 47 § 5; RRS § 6051.]

70.16.060 Breaking quarantine—Penalty. If any person shall come on shore from any vessel infected or justly suspected of being so subjected to or performing quarantine or shall leave the place appointed for the sick or for purification, being placed there or employed or placed there by the health officer without permission of such officer he or she shall be fined not exceeding one thousand dollars or imprisoned not exceeding three months, or both. [1888 p 47 § 6; RRS § 6052.]

70.16.070 Entering quarantined vessel or area. If any person shall without permission of the health officer go on board any vessel ordered for or performing quarantine or go within the limits appointed by the health officer for the reception of infected persons and property on shore, he or she shall be considered as infected and shall be held to undergo purification in the same manner and under the same regulations and penalties as those who are performing quarantine and shall remain there at his or her own expense until discharged by the health officer and any person coming into any such place having been previously disguised [designated] as a place for infected persons or property or on board any vessel ordered to or performing quarantine and having at the time the lawful flag as hereinafter described hoisted to the masthead without permission of the health officer he may be forcibly detained by the person or persons there employed by the health officer till he shall have undergone purification in the same manner and under the same regulations as those performing quarantine. [1888 p 48 § 7; RRS § 6053.]

70.16.080 Quarantine flag—Display—Penalty. A red flag at least six feet long and four feet wide shall be hoisted from sunrise to sunset at the main truck of any and all vessels ordered for and performing quarantine failing in which the vessel shall be liable to a fine of five hundred dollars, provided, the master or other person having the care and custody of any such vessel shall

first be notified of such regulation and have sufficient time and opportunity to procure said flag. A flag as hereinbefore described, shall also be conspicuously displayed at the place designated by the board of health for the reception of infected persons and property on shore in default of which the officer or officers having the control of such infected place shall forfeit his appointment and shall also be liable to a fine of fifty dollars to be recovered before any justice of the peace by any person suing for the same. [1888 p 48 § 8; RRS § 6054.]

70.16.090 Docking infected vessel, false declarations, etc.—Penalty. If any master, owner, supercargo, officer, seaman, or consignee of any vessel or any other person knowing such vessel to be subject to quarantine shall bring or suffer the same to be brought to or near any wharf, store or dwelling house or other building not in use for the purpose of the health officer in his official capacity as such or shall make any false declaration as to the port or place from which such vessel came or in regard to the condition and health of any person on board any such vessel or shall cause, aid or permit the landing of any person or property of any nature or kind whatever from such vessel without the permission of the health officer, he shall be punished by fine not exceeding five thousand dollars or imprisonment not exceeding three months or both. [1888 p 48 § 9; RRS § 6055.]

70.16.100 Failure to move vessel to quarantine—Penalty. If any such vessel shall not be removed to the place of quarantine agreeably to the directions of the health officer or shall be brought near any wharf, store or dwelling house or other building without his permission, the health officer shall cause such vessel to be forthwith removed to such place there to remain at the risk of the owners till expiration of the time limited by the health officer, and the expense of removal shall be paid by the master, owner or consignee who shall severally be liable therefor and may be recovered by the board of health together with costs of suit in any court having jurisdiction. [1888 p 49 § 10; RRS § 6056.]

70.16.110 Notification of health officers—Penalty. The master of every vessel arriving at any port in any county in the state of Washington or at any port in the waters bordering on said state, having on board any person infected with plague, smallpox or other malignant, infectious or pestilential disease, or who have been so infected during the voyage or having on board any goods which may reasonably be supposed to have any infection of such disease shall forthwith give notice thereof to the health officer, [;] if any such master or other person having charge of such vessel shall neglect to give such notice, he shall be fined not exceeding five thousand dollars or may be imprisoned not exceeding six months or both. [1888 p 49 § 11; RRS § 6057.]

70.16.120 Vessels to anchor at distance. When a vessel or steamer arrives at any seaport in this state, having on board any person infected with any malignant disease, the master, commander, or pilot thereof shall anchor it at some convenient place below the town or

city of such seaport, at a distance safe for the inhabitants thereof and the persons on board other vessels or steamers in the port; and no person or thing on board shall be brought on shore until the municipal or health officers give them written permit so to do. [Code 1881 § 2220; RRS § 6077.]

70.16.130 Penalty. For the wilful violation of the provisions of RCW 70.16.120, such master or commander shall forfeit not exceeding two hundred dollars, and the pilot not exceeding fifty dollars for such offense. [Code 1881 § 2221; RRS § 6078.]

70.16.140 Entry of vessels against quarantine—Penalty. When the master or commander of any vessel or steamer takes either of them up to any seaport, town or city, after notice that a quarantine has been so directed for all vessels or steamers coming from the port or place whence his vessel or steamer sailed, or by false declaration, or otherwise, fraudulently attempts to elude such directions, or lands or suffers to be landed from his vessel or steamer any person or thing without permission of the municipal or health officer, he shall be punished as provided in RCW 70.16.130. [Code 1881 § 2224; RRS § 6081.]

70.16.150 Vessel to perform quarantine—Penalty. The municipal or health officers of any seaport town or city may cause any vessel or steamer arriving there, to perform quarantine at such place and under such regulations as they may judge expedient when they think the safety of the inhabitants requires it; and whoever neglects or refuses to obey such orders and regulations, shall forfeit not exceeding five hundred dollars or be imprisoned not exceeding six months. [Code 1881 § 2222; RRS § 6079.]

70.16.160 Duty of pilots as to quarantine—Penalty. When such officers of a seaport, town or city, think it necessary to order all vessels or steamers, arriving there from any particular port or ports, to perform quarantine, they shall give notice thereof to the pilots of their port, who shall make it known to the master or commander of all vessels or steamers which they board. If any pilot neglects to do so, or contrary thereto, pilots any vessel or steamer up to said seaport, town or city, he shall forfeit not exceeding one hundred dollars. [Code 1881 § 2223; RRS § 6080.]

70.16.170 City to provide quarantine flag. The municipal or health officer of any seaport, town or city requiring vessels or steamers to perform quarantine shall provide, at the expense of such town or city, a suitable number of red flags, at least three yards in length; and the master or commander of every vessel or steamer ordered to perform quarantine shall cause one of them to be continually kept, during the term thereof, at the head of the mainmast of his vessel or steamer, and no person shall go on board such vessel or steamer during said term unless by permission of said officers. If he does, he shall be thereafter held liable to the same regulations and restrictions as those belonging to said vessel

or steamer, and shall there be detained by force if necessary, until duly discharged by said officers. [Code 1881 § 2225; RRS § 6082.]

70.16.180 Who may perform quarantine duties for city. In every seaport town or city where there is a health committee or health officer, he or they may perform all the duties and exercise all the authority of municipal officers in requiring vessels or steamers to perform quarantine. [Code 1881 § 2226; RRS § 6083.]

70.16.190 Expense of city quarantine. All the expenses incurred on account of any person, vessel, or steamer or goods under quarantine regulations, shall be paid by him or the owner of the vessel or steamer, or goods, as the case may be. [Code 1881 § 2227; RRS § 6084.]

70.16.200 Information to be furnished upon demand. If any master, seaman, or passenger of any vessel, or steamer, in which there is any infection, or has lately been, or is suspected to have been, or which has come from a port where any infectious disease prevails, dangerous to the public health, refuses to answer, on oath, such questions as are asked him relating to such infection or disease, by the municipal or health officer of the town or city to which such vessel comes, which oath, either of said officers may administer, he shall forfeit not exceeding two hundred dollars, or be imprisoned not more than six months. [Code 1881 § 2219; RRS § 6076.]

Chapter 70.20 PESTHOUSES, QUARANTINES, AND MISCELLANEOUS HEALTH PRECAUTIONS

Sections

70.20.010	Pesthouses authorized.
70.20.020	Notice of regulations.
70.20.030	Disposition of fines.
70.20.040	City may quarantine infected persons.
70.20.050	Arrivals from infected areas out of state—Penalty.
70.20.060	City may order infected persons removed—Penalty.
70.20.070	Suspected travelers may be examined—Penalty.
70.20.080	Suspected baggage may be quarantined.
70.20.090	Buildings may be impressed to house suspected articles.
70.20.100	Officers may enter buildings containing infected articles—Penalty for refusal to assist.
70.20.110	Expenses, payment of.
70.20.120	Compensation for services and buildings.
70.20.130	Courts may convene in other cities.
70.20.140	Infected prisoners—Removal.
70.20.150	Order of removal.
70.20.160	City or town may select health committee—Health officer—Powers.
70.20.165	Municipal officers as health committee.
70.20.170	Removal of filth on private property—Penalty.
70.20.180	Breaking quarantine.
70.20.185	Breaking quarantine—Penalty.

70.20.010 Pesthouses authorized. It shall be the duty of the health [officers] to appoint [appointed] under the provisions of *this act when by them deemed necessary to procure a suitable building, either by lease or construction to be used exclusively by the health officer as a pesthouse and to approve all necessary expenses of said health officer in procuring a building and keeping the

same in proper repair and obtaining necessary furniture therefor, and in carrying into effect the provisions of *this act and the county commissioners of any of the several counties of the state of Washington constituting said board of health shall appropriate a sufficient sum out of any money in the treasury of said county not otherwise appropriated to pay the health officer a just and reasonable compensation for the services performed in the discharge of his duty as such health officer and the county auditor shall issue an order countersigned by said board of health on the county treasurer who shall pay the same out of any money in the treasury not otherwise appropriated. [1888 p 49 § 12; RRS § 6058.]

*Reviser's note: "this act", see note following RCW 70.16.030.

70.20.020 Notice of regulations. The board of health shall give notice in such manner as they may think reasonable and most for the public good of any and all regulations made by them under the provisions of *this act, the expense or cost of which shall be paid out of the county treasury, and the county auditor is hereby authorized to draw his warrant countersigned by said board of health on the county treasurer for the same who shall pay such bill out of any money in the treasury not otherwise appropriated. [1888 p 49 § 13; RRS § 6059.]

*Reviser's note: "this act", see note following RCW 70.16.030.

70.20.030 Disposition of fines. All fines recovered under the provisions of *this act and not otherwise provided for, be and the same shall be paid into the county treasury: *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 § 30; 1888 p 50 § 14; RRS § 6060.]

*Reviser's note: "this act", see note following RCW 70.16.030.

Disposition of fines: Chapter 10.82 RCW.

70.20.040 City may quarantine infected persons. When any person is or has recently been infected with any disease or sickness dangerous to the public health, the municipal officers of the town or city where he or she is shall provide for the safety of the inhabitants as they think best, by removing him or her to a separate house if it can be done without great danger to his or her health, and by providing nurses and other assistants, and necessities, at his or her charge, or that of his or her parent or master, if able; otherwise, that of the town or city to which he or she belongs. [Code 1881 § 2204; RRS § 6061.]

70.20.050 Arrivals from infected areas out of state—Penalty. When any infectious or malignant disease is known to exist in any place out of the state, the municipal officers of any town or city in the state by giving public notice therein as they find convenient, may require any person coming from such place, to inform one of them or the town or city clerk of their arrival and from what place, and if he or she does not within two

hours after his or her arrival, or after actual notice of such requirement, give such information, he or she shall forfeit one hundred dollars to the use of the town or city. [Code 1881 § 2205; RRS § 6062.]

70.20.060 City may order infected persons removed—Penalty. Said officers may prohibit a person required to give such information from going to any part of their town where they may think his presence would be unsafe for the inhabitants, and if he does not comply, they may order him, unless disabled by sickness, forthwith to leave the town or city in the manner and by the road they may direct; and if he neglects or refuses so to do, any justice of any town or city, on complaint of either of said officers, may issue a warrant to any proper officer or other person named therein and cause him to be removed out of the state; and if, during the prevalence of such disease in the place where he resides, he returns to any town or city in this state, without the permission of the municipal officers thereof, he shall forfeit not exceeding one hundred dollars; and if said forfeiture is not paid he shall be imprisoned not less than three months nor more than six months. [Code 1881 § 2206; RRS § 6063.]

70.20.070 Suspected travelers may be examined—Penalty. The municipal officers of any town or city near to or adjoining the line of this state, may appoint by writing under their hands, suitable persons to attend at any places by which travelers may pass into such town or city from infected places in other states, territories and provinces, who may examine such passengers as they suspect of bringing with them any infection dangerous to the public health, and if need be, may restrain them from traveling until licensed thereto by a justice of the peace in the town or city, or one of said officers, and any such passenger who without such license, travels in this state except to return by the most direct way to the state, territory or province whence he came, after he has been cautioned to depart by the persons so appointed, shall forfeit one hundred dollars or be imprisoned three months. [Code 1881 § 2207; RRS § 6064.]

70.20.080 Suspected baggage may be quarantined. When, on the application of the municipal officers of any town or city, it appears to any justice of the peace that there is just cause to suspect that any baggage, clothing or goods of any kind within such town or city are infected with any malignant, contagious disease, by a warrant directed to a proper officer, he shall require him to impress so many men as the justice thinks necessary to secure such infected articles, and to post said men as a guard over the house or place where the articles are lodged, who shall prevent any person removing or coming near such articles, until due inquiry is made into the circumstances thereof. [Code 1881 § 2208; RRS § 6065.]

70.20.090 Buildings may be impressed to house suspected articles. He may by the same warrant, if it appears to him necessary, require said officers under the direction of the municipal officers, to impress and take

up convenient houses or other buildings for the safe-keeping of such infected articles, and cause them to be removed thereto or otherwise detained, until municipal officers think they are free from infection. [Code 1881 § 2209; RRS § 6066.]

70.20.100 Officers may enter buildings containing infected articles—Penalty for refusal to assist. Said officers, if need be, may break open any house, shop or other place mentioned in the warrant where infected articles are, and require such aid as is necessary to execute it, and all persons at the command of either of said officers shall assist in such execution under a penalty for refusal, of not exceeding ten dollars. [Code 1881 § 2210; RRS § 6067.]

70.20.110 Expenses, payment of. The charges of securing such infected articles and of transporting and purifying them, shall be paid by the owners thereof at the price determined by the municipal officers. [Code 1881 § 2211; RRS § 6068.]

70.20.120 Compensation for services and buildings. When the officer impresses or takes up any house or other building or other necessaries, or impresses any man as herein provided, the parties interested shall have just compensation therefor, to be paid by the town or city in which such persons or property were impressed. [Code 1881 § 2212; RRS § 6069.]

70.20.130 Courts may convene in other cities. When a malignant infectious disease prevails in any town or city wherein the supreme or judicial court is to be held, said courts may be adjourned and may be held in any town or city in said county, by proclamation made in such public manner as the courts judge best, as near their usual place of meeting as they think safety permits. [Code 1881 § 2213; RRS § 6070.]

70.20.140 Infected prisoners—Removal. When any person in any jail or prison or workhouse in this state, is attacked with any disease which the municipal officers of his town upon medical advice consider dangerous to the safety and health of other prisoners, or of the inhabitants of the town or city, they shall, by their order in writing, direct his removal to some place of safety, there to be securely kept and provided for until their further order; and if he recovers from such disease, he shall be returned to his place of confinement. [Code 1881 § 2214; RRS § 6071.]

70.20.150 Order of removal. If he was committed by order of a court or under a judicial process, the order for his removal, or a copy thereof attested by the municipal officers, shall be returned by them with the doings thereon, into the office of the clerk of the court from which such order or process was issued. No such removal shall be deemed an escape. [Code 1881 § 2215; RRS § 6072.]

70.20.160 City or town may select health committee—Health officer—Powers. A town or city may,

at its annual meeting, choose or elect a health committee, of not less than three nor more than five, or one person to be a health officer who shall remove, at the expense of their town or city all filth found in any place therein, which, in their judgment endangers the lives or health of any inhabitant, and require the owner or occupant, when they think necessary, to remove or discontinue any drain or other source of filth. [Code 1881 § 2216; RRS § 6073.]

Town or city health officer, appointment: Chapter 70.05 RCW.

70.20.165 Municipal officers as health committee. If any town or city, at its annual election, omits to choose or elect such committee or officer, the municipal officers shall be a health committee and have all their powers and perform all their duties. [Code 1881 § 2217; RRS § 6074.]

Town or city health officer, appointment: Chapter 70.05 RCW.

70.20.170 Removal of filth on private property—Penalty. When any source of filth, or other cause of sickness is found on private property, the owners or occupant thereof shall, within twenty-four hours after notice from the said committee or officers, at his own expense, remove or discontinue it; and if he neglects or unreasonably delays to do so, he shall forfeit not exceeding fifty dollars; and said committee or officers shall cause said nuisance to be removed or discontinued, and all expenses shall be repaid to the town or city by such owner or occupant, or by the person who caused or permitted it. [Code 1881 § 2218; RRS § 6075.]

Nuisances, generally: Chapters 7.48 and 9.66 RCW.

70.20.180 Breaking quarantine. Whenever a house has been quarantined by the board of health in any city or towns in this state, it shall be unlawful for any person, without the permission of the health officer, to leave the said house. [1901 c 48 § 1; no RRS. FORMER PART OF SECTION: 1901 c 48 § 2 now codified as RCW 70.20.185.]

70.20.185 Breaking quarantine—Penalty. Any person violating the provisions of RCW 70.20.180, shall be deemed guilty of a misdemeanor and shall be fined in any sum not exceeding one hundred dollars, or imprisoned in the county jail for a period of thirty days, or both such fine and imprisonment. [1901 c 48 § 2; no RRS. Formerly RCW 70.20.180.]

Chapter 70.22 MOSQUITO CONTROL

Sections	
70.22.010	Declaration of purpose.
70.22.020	Director of health may make inspections, investigations and determinations and provide for control.
70.22.030	Director to coordinate plans.
70.22.040	Director may contract with, receive funds from entities and individuals—Authorization for governmental entities to contract, grant funds, levy taxes.
70.22.050	Powers and duties of director of health.
70.22.060	Governmental entities to cooperate with director.
70.22.900	Severability—1961 c 283.

70.22.010 Declaration of purpose. The purpose of this chapter is to establish a state-wide program for the control or elimination of mosquitoes as a health hazard. [1961 c 283 § 1.]

Weeds, rodents and pests: Title 17 RCW.

70.22.020 Director of health may make inspections, investigations and determinations and provide for control. The director of the state department of health is hereby authorized and empowered to make or cause to be made such inspections, investigations, studies and determinations as he may from time to time deem advisable in order to ascertain the effect of mosquitoes as a health hazard, and, to the extent to which funds are available, to provide for the control or elimination thereof in any or all parts of the state. [1961 c 283 § 2.]

70.22.030 Director to coordinate plans. The director of health shall coordinate plans for mosquito control work which may be projected by any county, city or town, municipal corporation, taxing district, state department or agency, federal government agency, or any person, group or organization, and arrange for cooperation between any such districts, departments, agencies, persons, groups or organizations. [1961 c 283 § 3.]

70.22.040 Director may contract with, receive funds from entities and individuals—Authorization for governmental entities to contract, grant funds, levy taxes. The director of health is authorized and empowered to receive funds from any county, city or town, municipal corporation, taxing district, the federal government, or any person, group or organization to carry out the purpose of this chapter. In connection therewith the director is authorized and empowered to contract with any such county, city, or town, municipal corporation, taxing district, the federal government, person, group or organization with respect to the construction and maintenance of facilities and other work for the purpose of effecting mosquito control or elimination, and any such county, city or town, municipal corporation, or taxing district obligated to carry out the provisions of any such contract entered into with the director of health is authorized, empowered and directed to appropriate, and if necessary, to levy taxes for and pay over such funds as its contract with the director may from time to time require. [1961 c 283 § 4.]

70.22.050 Powers and duties of director of health. To carry out the purpose of this chapter, the director of health may

(2) abate as nuisances breeding places for mosquitoes as defined in RCW 17.28.170;

(3) acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for carrying out the purpose of this chapter;

(4) make contracts, employ engineers, health officers, sanitarians, physicians, laboratory personnel, attorneys, and other technical or professional assistants;

(5) publish information or literature;

(6) do any and all other things necessary to carry out the purpose of this chapter: *Provided*, That no program shall be permitted nor any action taken in pursuance thereof which may be injurious to the life or health of game or fish. [1961 c 283 § 5.]

Reviser's note: Subdivision (1) was vetoed.

70.22.060 Governmental entities to cooperate with director. Each state department, agency, and political subdivision shall cooperate with the director of health in carrying out the purposes of this chapter. [1961 c 283 § 6.]

70.22.900 Severability—1961 c 283. 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. [1961 c 283 § 7.]

Chapter 70.24

CONTROL AND TREATMENT OF VENEREAL DISEASES

Sections

70.24.010	Venereal diseases designated.
70.24.020	Examination and treatment of suspected persons.
70.24.030	Treatment of infected prisoners.
70.24.040	Rules and regulations—Penalty.
70.24.050	Laboratory examinations.
70.24.060	Appeal to state director—Findings conclusive.
70.24.070	Quarantine districts authorized.
70.24.080	Penalty.
70.24.090	Test of pregnant women for syphilis.
70.24.100	Syphilis laboratory tests.
70.24.110	Minors—Treatment, consent, liability for payment for care.

70.24.010 Venereal diseases designated. Syphilis, gonorrhea and chancroid hereinafter designated as venereal diseases are hereby declared to be contagious, infectious, communicable and dangerous to the public health. It shall be unlawful for anyone infected with these diseases or any of them to expose another person to infection. [1919 c 114 § 1; RRS § 6100.]

70.24.020 Examination and treatment of suspected persons. State, county and municipal health officers, or their authorized deputies, who are licensed physicians, within their respective jurisdictions are hereby directed and empowered, when in their judgment it is necessary to protect the public health, to make examination of persons reasonably suspected of being infected with venereal disease of a communicable nature, and to require persons infected with venereal disease of such communicable nature to report for treatment to a reputable physician and continue treatment until cured, or to submit to treatment provided at public expense until cured, and also, when in the judgment of the state commissioner of health, it is necessary to protect the public health, to isolate or quarantine persons infected with venereal disease of such communicable nature. It shall be the duty of all local and state health officers to investigate sources of infection of venereal diseases, to cooperate with the proper officials whose duty it is to enforce

laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution: *Provided*, That any person suspected as herein set out may have present at the time of taking the blood sample or smear a physician of his or her choosing, who may satisfy himself that the blood or smear taken is that of the suspected person, and that the same shall be forwarded to the proper state authorities for laboratory tests, and: *Provided, further*, That the suspected person shall be informed by the health officer of his or her rights under *this act. [1919 c 114 § 2; RRS § 6101.]

*Reviser's note: "this act" appears in 1919 c 114 codified as RCW 70.24.010 through 70.24.080.

Construction—1919 c 114: "The provisions of this act shall be cumulative with the existing laws and regulations and nothing herein shall abridge or limit the powers of health authorities as construed by the supreme court of the state of Washington; except as herein otherwise provided." [1919 c 114 § 9.]

70.24.030 Treatment of infected prisoners. Any person who shall be confined or imprisoned in any state, county, or city prison in the state and who may be reasonably suspected by the health officer of being infected with venereal disease shall be examined for and, if infected, treated for venereal diseases by the health authorities or their deputies who are licensed physicians. The prison authorities of any state, county, or city prison are directed to make available to the health authorities such portion of any state, county, or city prison as may be necessary for a clinic or hospital wherein all persons who may be confined or imprisoned in any such prison and who are infected with venereal disease, and all such persons who are suffering with venereal disease at the time of the expiration of their terms of imprisonment, and, in case no other suitable place for isolation or quarantine is available, such other persons as may be isolated or quarantined under the provisions of RCW 70.24.020, shall be isolated and treated at public expense until cured, or, in lieu of such isolation any of such persons may, in the discretion of the board of health, be required to report for treatment to a licensed physician, or submit to treatment provided at public expense as provided in RCW 70.24.020. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime. [1919 c 114 § 3; RRS § 6102.]

70.24.040 Rules and regulations—Penalty. The state board of health is hereby empowered and directed to make such rules and regulations as shall in its judgment be necessary for the carrying out of the provisions of *this act, including rules and regulations providing for the control and treatment of persons isolated or quarantined under the provisions of RCW 70.24.020, and such other rules and regulations, not in conflict with provisions of *this act, concerning the control of venereal diseases, and concerning the care, treatment and quarantine of persons infected therewith, as it may from time to time deem advisable. All such rules and regulations so made shall be of force and binding upon all county and municipal health officers and other persons affected by *this act, and shall have the force and effect of law: *Provided*, That such regulations shall prescribe

reasonable safeguards against the disclosure of the names of any such infected persons, who faithfully comply with the provisions of *this act and the lawful regulations of the state board of health, except to officers and physicians charged with the enforcement of this act and such rules and regulations and any violation of such safeguarding regulations, shall be a gross misdemeanor. [1919 c 114 § 4; RRS § 6103.]

*Reviser's note: "this act", see note following RCW 70.24.020.

70.24.050 Laboratory examinations. Diagnosis in every instance must be confirmed by laboratory examinations in a laboratory approved by the state board of health, before any person shall be isolated or committed to quarantine and before any person committed to quarantine shall be discharged therefrom. [1919 c 114 § 6; RRS § 6105.]

70.24.060 Appeal to state director—Findings conclusive. Any person committed to quarantine under the provisions of *this act, feeling aggrieved at the finding of any health officer that he or she is infected, or at the finding of any quarantine officer that he or she has not been cured of infection, shall have the right of appeal from such finding to the state commissioner of health; and it shall be the duty of every health officer making an examination, and of every quarantine officer, to notify all persons examined or quarantined of their rights in that regard, and to supply them with the forms necessary for that purpose, upon which to make such appeals, to be provided by the state commissioner of health, and to immediately transmit any such appeals by mail to the state commissioner of health; and the state commissioner of health shall, within five days after receiving any such appeal, either in person or by regular or special physician deputy appointed for that purpose, and skilled in the diagnosis of contagious venereal diseases, examine or cause to be examined the person taking the appeal, and the finding and conclusion of the commissioner of health or his deputy so making such examination shall be final and conclusive. [1919 c 114 § 7; RRS § 6106.]

*Reviser's note: "this act", see note following RCW 70.24.020.

State commissioner of health, office abolished and powers and duties transferred to director of health: See 1921 c 7 §§ 59 and 135. The department of health was abolished by RCW 43.20A.500 and its powers, duties and functions were transferred to the secretary of social and health services by RCW 43.20A.120.

70.24.070 Quarantine districts authorized. For the purpose of carrying out the provisions of *this act the state board of health shall have the power and authority, from time to time, to divide the state into such number of quarantine districts consisting of one or more counties or parts of counties or municipalities as it shall deem expedient, and to establish at such place or places as it shall deem necessary quarantine stations and clinics for the detention and treatment of persons found to be infected and to establish any such quarantine station and clinic in connection with any county or city jail, or in any hospital or other public or private institution having, or which may be provided with, such necessary detention, segregation, isolation, clinic and hospital facilities

as may be required and prescribed by the board, and to enter into arrangements for the conduct of such quarantine stations and clinics with the public officials or persons, associations, or corporations in charge of or maintaining and operating such institutions. [1919 c 114 § 8; RRS § 6107.]

*Reviser's note: "this act", see note following RCW 70.24.020.

70.24.080 Penalty. Any person who shall violate any of the provisions of *this act or any lawful rule or regulation made by the state board of health pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by any state, county or municipal health officer, pursuant to the authority granted in *this act, shall be deemed guilty of a gross misdemeanor. [1919 c 114 § 5; RRS § 6104.]

*Reviser's note: "this act", see note following RCW 70.24.020.

70.24.090 Test of pregnant women for syphilis. Every physician attending a pregnant woman in the state of Washington during gestation shall, in the case of each woman so attended, take or cause to be taken a sample of blood of such woman at the time of first examination, and submit such sample to an approved laboratory for a standard serological test for syphilis. If the pregnant woman first presents herself for examination after the fifth month of gestation the physician or other attendant shall in addition to the above, advise and urge the patient to secure a medical examination and blood test before the fifth month of any subsequent pregnancies. [1939 c 165 § 1; RRS § 6002-1.]

70.24.100 Syphilis laboratory tests. A standard serological test shall be a laboratory test for syphilis approved by the state director of health and shall be performed either by a laboratory approved by the state director of health for the performance of the particular serological test used or by the state department of health, on request of the physician free of charge. [1939 c 165 § 2; RRS § 6002-2.]

70.24.110 Minors—Treatment, consent, liability for payment for care. A minor fourteen years of age or older who may have come in contact with any venereal disease or suspected venereal disease may give consent to the furnishing of hospital, medical and surgical care related to the diagnosis or treatment of such disease. Such consent shall not be subject to disaffirmance because of minority. The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize hospital, medical and surgical care related to such disease and such parent, parents, or legal guardian shall not be liable for payment for any care rendered pursuant to this section. [1969 ex.s. c 164 § 1.]

Chapter 70.28 CONTROL OF TUBERCULOSIS

Sections

70.28.010 Physicians required to report cases.
70.28.020 Record of reports.
70.28.031 Powers and duties of health officers.

70.28.033 Isolation or examination order of health officer—Violation—Penalty.
70.28.035 Isolation or examination order of health officer—Refusal to obey—Application for superior court order.
70.28.037 Superior court order for confinement of individuals having active tuberculosis.
70.28.040 Penalty.
70.28.050 Enforcement of regulations.

70.28.010 Physicians required to report cases. All practicing physicians in the state are hereby required to report to the local boards of health in writing, the name, age, sex, occupation and residence of every person having tuberculosis who has been attended by, or who has come under the observation of such physician within five days thereof. [1967 c 54 § 1; 1899 c 71 § 1; RRS § 6109.]

Severability—1967 c 54: "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 c 54 § 20.]

This applies to RCW 70.28.031-70.28.037, and 70.30.071; the 1967 amendments to RCW 70.28.010, 70.28.020, 70.28.050, 70.30.010, 70.30.040, 70.30.050, 70.30.060, 70.30.080, 70.30.100, 70.32.040, 70.32.050, 70.32.060, 70.32.080; and to the repeal of RCW 70.28.030, 70.30.070, 70.30.090, 70.30.120, 70.30.150, 70.32.011, 70.32.022-70.32.025, 70.32.070, 70.34.010-70.34.190, and 70.36.010-70.36.060.

70.28.020 Record of reports. All local boards of health in this state are hereby required to receive and keep a permanent record of the reports required by RCW 70.28.010 to be made to them; such records shall not be open to public inspection, but shall be submitted to the proper inspection of other local and state boards of health alone, and such records shall not be published nor made public. [1967 c 54 § 2; 1899 c 71 § 2; RRS § 6110.]

70.28.031 Powers and duties of health officers. Each health officer is hereby directed to use every available means to ascertain the existence of, and immediately to investigate, all reported or suspected cases of tuberculosis in the infectious stages within his jurisdiction and to ascertain the sources of such infections. In carrying out such investigations, each health officer is hereby invested with full powers of inspection, examination and quarantine or isolation of all persons known to be infected with tuberculosis in an infectious stage or persons who have been previously diagnosed as having tuberculosis and who are under medical orders for periodic follow-up examinations and is hereby directed:

(a) To make such examinations as are deemed necessary of persons reasonably suspected of having tuberculosis in an infectious stage and to isolate or isolate and quarantine such persons, whenever deemed necessary for the protection of the public health.

(b) To make such examinations as deemed necessary of persons who have been previously diagnosed as having tuberculosis and who are under medical orders for periodic follow-up examinations.

(c) Follow local rules and regulations regarding examinations, quarantine, or isolation, and all rules, regulations, and orders of the state board and of the

department in carrying out such examination, quarantine or isolation.

(d) Whenever the health officer shall determine on reasonable grounds that an examination of any person is necessary for the preservation and protection of the public health, he shall make an examination order in writing, setting forth the name of the person to be examined, the time and place of the examination, and such other terms and conditions as may be necessary to protect the public health. Nothing contained in this subdivision shall be construed to prevent any person whom the health officer determines should have an examination for infectious tuberculosis from having such an examination made by a physician of his own choice who is licensed to practice osteopathy and surgery under chapter 18.57 RCW or medicine and surgery under chapter 18.71 RCW under such terms and conditions as the health officer shall determine on reasonable grounds to be necessary to protect the public health.

(e) Whenever the health officer shall determine that quarantine or isolation in a particular case is necessary for the preservation and protection of the public health, he shall make an isolation or quarantine order in writing, setting forth the name of the person to be isolated, the period of time during which the order shall remain effective, the place of isolation or quarantine, and such other terms and conditions as may be necessary to protect the public health.

(f) Upon the making of an examination, isolation, or quarantine order as provided in this section, a copy of such order shall be served upon the person named in such order.

(g) Upon the receipt of information that any examination, quarantine, or isolation order, made and served as herein provided, has been violated, the health officer shall advise the prosecuting attorney of the county in which such violation has occurred, in writing, and shall submit to such prosecuting attorney the information in his possession relating to the subject matter of such examination, isolation, or quarantine order, and of such violation or violations thereof.

(h) Any and all orders authorized under this section shall be made by the health officer or his tuberculosis control officer. [1967 c 54 § 4.]

70.28.033 Isolation or examination order of health officer—Violation—Penalty. Inasmuch as the order provided for by RCW 70.28.031 is for the protection of the public health, any person who, after service upon him of an order of a health officer directing his isolation or examination as provided for in RCW 70.28.031, violates or fails to comply with the same or any provision thereof, is guilty of a misdemeanor, and, upon conviction thereof, in addition to any and all other penalties which may be imposed by law upon such conviction, may be ordered by the court confined until such order of such health officer shall have been fully complied with or terminated by such health officer, but not exceeding six months from the date of passing judgment upon such conviction: *Provided*, That the court, upon suitable assurances that such order of such health officer will be

complied with, may place any person convicted of a violation of such order of such health officer upon probation for a period not to exceed two years, upon condition that the said order of said health officer be fully complied with: *And provided further*, That upon any subsequent violation of such order of such health officer, such probation shall be terminated and confinement as herein provided ordered by the court. [1967 c 54 § 5.]

70.28.035 Isolation or examination order of health officer—Refusal to obey—Application for superior court order. In addition to the proceedings set forth in RCW 70.28.031, where a local health officer has reasonable cause to believe that an individual has tuberculosis as defined in the rules and regulations of the state board of health, and the individual refuses to obey the order of the local health officer to appear for an initial examination or a follow-up examination, the health officer may apply to the superior court for an order requiring the individual to comply with the order of the local health officer. [1967 c 54 § 6.]

70.28.037 Superior court order for confinement of individuals having active tuberculosis. Where it has been determined after an examination as prescribed above, that an individual has active tuberculosis, and he resides in a county in which no tuberculosis facility is located, upon application to the superior court by the local health officer, the superior court may order the sheriff to transport said individual to a designated tuberculosis facility for isolation, treatment and care until such time as the medical director of the hospital determines that his condition is such that it is safe for him to be discharged from the facility. [1967 c 54 § 7.]

70.28.040 Penalty. Any practicing physician who shall wilfully fail to comply with the provisions of RCW 70.28.010 shall be guilty of a misdemeanor, and on conviction thereof may be fined for the first offense not exceeding five dollars, and for any subsequent offense not exceeding one hundred dollars. [1899 c 71 § 4; RRS § 6112.]

70.28.050 Enforcement of regulations. It is hereby made the duty of every person having tuberculosis and of every one attending such person, and of the authorities of public and private institutions, hospitals or dispensaries, to observe and enforce the sanitary rules and regulations prescribed from time to time by the local boards of health and by the state board of health for the prevention of the spread of pulmonary tuberculosis. [1967 c 54 § 3; 1899 c 71 § 5; RRS § 6113.]

Chapter 70.30

TUBERCULOSIS HOSPITALS AND FACILITIES

Sections

70.30.061	Admissions to facility.
70.30.072	Payment for care of patients.
70.30.081	Annual inspections.

County hospitals: Chapter 36.62 RCW.

Hospital's lien: Chapter 60.44 RCW.

Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.

70.30.061 Admissions to facility. Any person residing in the state and needing treatment for tuberculosis, may apply in person to the local health officer or to any licensed physician for examination and if such physician has reasonable cause to believe that said person is suffering from tuberculosis in any form he may apply to the local health officer or tuberculosis hospital director for admission of said person to an appropriate facility for the care and treatment of tuberculosis. [1973 1st ex.s. c 213 § 1; 1972 ex.s. c 143 § 2.]

70.30.072 Payment for care of patients. Upon admission of a patient to a tuberculosis hospital, the secretary or the hospital director, as appropriate, or their designees, shall determine the patient's ability to pay for his care in whole or in part. If the patient or said relatives are not financially able to contribute in whole or in part to his care in the facility, said patient shall be admitted free of charge, or upon the payment of a portion of the charges. [1972 ex.s. c 143 § 3.]

70.30.081 Annual inspections. All hospitals established or maintained for the treatment of persons suffering from tuberculosis shall be subject to annual inspection, or more frequently if required by federal law, by agents of the department of social and health services, and the medical director shall admit such agents into every part of the facility and its buildings, and give them access on demand to all records, reports, books, papers, and accounts pertaining to the facility. [1972 ex.s. c 143 § 4.]

Chapter 70.32

COUNTY AND STATE TUBERCULOSIS FUNDS

Sections

- 70.32.010 Tax levy directed—Tuberculosis fund.
 70.32.050 Responsibility of local health officer.
 70.32.060 Medical reports on patients.
 70.32.090 Counties where tax levy more than adequate—Surplus for general county or public hospital district purpose.

State administered tuberculosis hospital facilities: Chapter 70.33 RCW.

70.32.010 Tax levy directed—Tuberculosis fund. (Effective until January 1, 1977.) Tuberculosis is a communicable disease and tuberculosis control, case finding, prevention and follow up of known cases of tuberculosis represents the basic step in the conquest of this major health problem. In order to carry on such work effectively, the legislative authority of each county enumerated in RCW 70.33.040 shall budget and shall levy annually a tax in a sum equal to the amount which would be raised by a levy of six and one-quarter cents per thousand dollars of assessed value against the taxable property in any county enumerated in RCW 70.33.040, to be used for the control of tuberculosis, including case finding, prevention and follow up of known cases of tuberculosis: *Provided*, That upon certification of the secretary that any such county has an unexpended balance from such levy, over and above the amount

required for adequate tuberculosis control, including case finding, prevention and follow up of known cases of tuberculosis within such county, the legislative authority may budget and reappropriate the same for such tuberculosis control for the ensuing year, or it may allocate from time to time such unexpended balance, or any portion thereof, to the county health department for use in furtherance of other communicable disease prevention or control, or as provided in RCW 70.32.090 as now or hereafter amended. The sum herein provided for, and any income that may accrue from miscellaneous receipts in connection with the tuberculosis control program of such county, shall be placed in the county treasury in a special fund to be known as the tuberculosis fund, and obligations incurred for the tuberculosis control program shall be paid from said fund by the county treasurer in the same manner as general county obligations are paid. The county auditor shall furnish to the legislative authority and the department a monthly report of receipts and disbursements in the tuberculosis fund, which report shall also show balances of cash on hand. [1973 1st ex.s. c 195 § 79; 1971 ex.s. c 277 § 21; 1970 ex.s. c 47 § 7; 1967 ex.s. c 110 § 11; 1959 c 117 § 1; 1945 c 66 § 1; 1943 c 162 § 1; Rem. Supp. 1945 § 6113-1.]

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

County treasurer: Chapter 36.29 RCW.

Definitions: RCW 70.33.010.

Tax levy directed—Proceeds to state—Surplus revenue returned: RCW 70.33.040.

70.32.010 Expenditures for tuberculosis control directed—Standards. (Effective January 1, 1977.) Tuberculosis is a communicable disease and tuberculosis control, case finding, prevention and follow up of known cases of tuberculosis represents the basic step in the conquest of this major health problem. In order to carry on such work effectively in accordance with the standards set by the secretary pursuant to RCW 70.33.020, the legislative authority of each county shall budget a sum to be used for the control of tuberculosis, including case finding, prevention and follow up of known cases of tuberculosis. [1975 1st ex.s. c 291 § 3; 1973 1st ex.s. c 195 § 79; 1971 ex.s. c 277 § 21; 1970 ex.s. c 47 § 7; 1967 ex.s. c 110 § 11; 1959 c 117 § 1; 1945 c 66 § 1; 1943 c 162 § 1; Rem. Supp. 1945 § 6113-1.]

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

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

County budget for tuberculosis facilities—State services: RCW 70.33.040.

County treasurer: Chapter 36.29 RCW.

Definitions: RCW 70.33.010.

70.32.050 Responsibility of local health officer. All arrangements for hospital care, tuberculosis case finding and post hospital public health follow-up of known cases of tuberculosis of any county enumerated in RCW 70.33.040 shall be the responsibility of the local health officer and shall be carried out pursuant to rules and regulations adopted by the state board of health. [1971

ex.s. c 277 § 22; 1967 c 54 § 16; 1945 c 66 § 5; 1943 c 162 § 5; Rem. Supp. 1945 § 6113-5.]

Definitions: RCW 70.33.010.

70.32.060 Medical reports on patients. Medical reports on the condition of all patients shall be submitted to the health department of any county of the patient's residence by the hospital medical director at such times, on such forms and in accordance with such procedure as may be prescribed by the secretary. [1971 ex.s. c 277 § 23; 1967 c 54 § 17; 1945 c 66 § 6; 1943 c 162 § 6; Rem. Supp. 1945 § 6113-6.]

Definitions: RCW 70.33.010.

70.32.090 Counties where tax levy more than adequate—Surplus for general county or public hospital district purpose. (Effective until January 1, 1977.) In any county enumerated in RCW 70.33.040 where the secretary has certified that the proceeds of the six and one-quarter cents per thousand dollars of assessed value tax levy is more than adequate to provide for tuberculosis control, including case finding, prevention, and follow-up of known cases of tuberculosis in the county, the legislative authority, after a special public hearing conducted in accordance with the procedures established for hearings on budgetary matters as delineated in RCW 36.40.060 and 36.40.070 and upon making a finding that an adequate general public health program is being carried out in the county, may budget and reappropriate such surplus funds from the six and one-quarter cents per thousand dollars of assessed value tax levy for the ensuing year to the county treasury for general purposes of the county, as authorized by law, or the legislative authority in its discretion may budget, reappropriate and transfer such surplus fund to any public hospital district within the county. [1973 1st ex.s. c 195 § 80; 1971 ex.s. c 277 § 24; 1967 ex.s. c 110 § 15; 1961 c 101 § 1; 1959 c 117 § 3.]

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

Definitions: RCW 70.33.010.

Chapter 70.33 STATE ADMINISTERED TUBERCULOSIS HOSPITAL FACILITIES

Sections	
70.33.010	Definitions.
70.33.020	Secretary's administrative responsibility—Scope.
70.33.030	Medical director—Qualifications—Powers and duties.
70.33.040	Tax levy directed—State services (as amended by 1973 1st ex.s. c 213 § 4).
70.33.040	Tax levy directed—Proceeds to state—Surplus revenues returned (as amended by 1973 1st ex.s. c 195 § 81).
70.33.040	County budget for tuberculosis facilities—State services. (Effective January 1, 1977.)
70.33.050	County responsibility for costs of care terminates, when.
70.33.060	Transfer of assets and liabilities to department, when.

70.33.010 Definitions. The following words and phrases shall have the designated meanings in this chapter and RCW 70.32.010, 70.32.050, 70.32.060 and 70.32.090 unless the context clearly indicated otherwise:

- (1) "Department" means the department of social and health services;
- (2) "Secretary" means the secretary of the department of social and health services or his designee;
- (3) "Tuberculosis hospital" and "tuberculosis hospital facility" refer to hospitals for the care of persons suffering from tuberculosis;
- (4) "Tuberculosis control" refers to the procedures administered in the counties for the control and prevention of tuberculosis, but does not include hospitalization. [1971 ex.s. c 277 § 15.]

70.33.020 Secretary's administrative responsibility—Scope. From and after August 9, 1971, the secretary shall have responsibility for establishing standards for the control, prevention and treatment of tuberculosis and shall have administrative responsibility and control for all tuberculosis hospital facilities in the state operated pursuant to this chapter and RCW 70.32.010, 70.32.050, 70.32.060 and 70.32.090 and for providing, either directly or through agreement, contract or purchase, hospital, nursing home and other appropriate facilities and services including laboratory services for persons who are, or may be suffering from tuberculosis except as otherwise provided by RCW 70.30.061, 70.33.020, 70.33.030, 70.33.040 and 70.35.040.

Pursuant to that responsibility, the secretary shall have the following powers and duties:

- (1) To develop and enter into such agreements, contracts or purchase arrangements with counties and public and private agencies or institutions to provide for hospitalization, nursing home or other appropriate facilities and services for persons who are or may be suffering from tuberculosis, or to provide for and maintain any tuberculosis hospital facility which the secretary determines is necessary to meet the needs of the state, to determine where such hospitals shall be located and to adequately staff such hospitals to meet patient care needs;
- (2) To appoint a medical director for each tuberculosis hospital facility operated pursuant to this chapter and RCW 70.32.010, 70.32.050, 70.32.060 and 70.32.090;
- (3) Adopt such rules and regulations as are necessary to assure effective patient care and treatment, and to provide for the general administration of tuberculosis hospital facilities operated pursuant to this chapter and RCW 70.32.010, 70.32.050, 70.32.060 and 70.32.090. [1973 1st ex.s. c 213 § 2; 1971 ex.s. c 277 § 16.]

70.33.030 Medical director—Qualifications—Powers and duties. The medical director of any tuberculosis hospital facility operated pursuant to this chapter and RCW 70.32.010, 70.32.050, 70.32.060 and 70.32.090 and RCW 70.30.061, 70.33.020, 70.33.030, 70.33.040 and 70.35.040 shall be a qualified and licensed practitioner of medicine and shall have the following powers and duties:

(1) To provide for the administration of the hospital according to the rules and regulations adopted by the department;

(2) To adopt and publish such rules and regulations governing the administration of the hospital as are deemed necessary: *Provided*, That such rules and regulations are not in conflict with those adopted by the department and have the written approval of the secretary. [1973 1st ex.s. c 213 § 3; 1971 ex.s. c 277 § 17.]

70.33.040 Tax levy directed—State services (as amended by 1973 1st ex.s. c 213 § 4). (Effective until January 1, 1977.) In order to maintain adequate tuberculosis hospital facilities and to provide for adequate hospitalization, nursing home and other appropriate facilities and services for the residents of the state of Washington who are or may be suffering from tuberculosis and to assure their proper care pursuant to this chapter, the standards set by the secretary pursuant to RCW 70.33.020 and RCW 70.32.010, 70.32.050, 70.32.060 and 70.32.090, the legislative authority of Clallam, Jefferson, Kitsap, Mason, Grays Harbor, Thurston, Pacific, Lewis, Wahkiakum, Cowlitz, Clark, Skamania, Klickitat, Pierce, King, Snohomish, Skagit, Whatcom, San Juan and Island counties shall levy annually a tax in the sum equal to the amount which would be raised by a levy of one-sixteenth mill against the actual value of the taxable property in the county.

If such counties desire to receive state services, they may elect to utilize funds collected pursuant to this section for the purpose of contracting with the state upon agreement by the state for the cost of providing tuberculosis hospitalization and/or outpatient treatment including laboratory services, or such funds may be retained by the county for operating its own services for the prevention and treatment of tuberculosis or any other community health purposes authorized by law. None of such counties shall be required to make any payments to the state or any other agency from these funds except upon the express consent of the county legislative authority: *Provided*, That if the counties do not comply with the promulgated standards of the department the secretary shall take action to provide such required services and to charge the affected county directly for the provision of these services by the state. [1973 1st ex.s. c 213 § 4; 1971 ex.s. c 277 § 18.]

70.33.040 Tax levy directed—Proceeds to state—Surplus revenues returned (as amended by 1973 1st ex.s. c 195 § 81). (Effective until January 1, 1977.) In order to maintain adequate tuberculosis hospital facilities for the residents of the state of Washington and to assure their proper care pursuant to this chapter and RCW 70.32.010, 70.32.050, 70.32.060 and 70.32.090, the legislative authority of Clallam, Jefferson, Kitsap, Mason, Grays Harbor, Thurston, Pacific, Lewis, Wahkiakum, Cowlitz, Clark, Skamania, Klickitat, Pierce, King, Snohomish, Skagit, Whatcom, San Juan and Island counties shall, levy annually a tax in the sum equal to the amount which would be raised by a levy of six and one-quarter cents per thousand dollars of assessed value against the taxable property in the county. Upon collection such sum shall be paid to the state to be used for the cost of maintaining and operating tuberculosis hospital facilities operated pursuant to this chapter and RCW 70.32.010, 70.32.050, 70.32.060 and 70.32.090. All other sources of revenue in tuberculosis hospital facilities operated pursuant to this chapter and RCW 70.32.010, 70.32.050, 70.32.060 and 70.32.090 shall be collected by such tuberculosis hospital facilities.

There is hereby appropriated to the department such revenue as is collected resulting from the six and one-quarter cents per thousand dollars of assessed value levy provided for herein, and the collections made by the tuberculosis hospital facilities. Such appropriations to the department shall be used for the cost of maintaining and operating tuberculosis hospital facilities pursuant to this chapter and RCW 70.32.010, 70.32.050, 70.32.060 and 70.32.090: *Provided*, That in the event that the revenues collected under this section exceed the cost of hospitalization, surplus revenues will be returned to the counties in proportion to the property taxes collected from those counties. [1973 1st ex.s. c 195 § 81; 1971 ex.s. c 277 § 18.]

Reviser's note: RCW 70.33.040 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.

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

Tax levy directed—Tuberculosis fund: RCW 70.32.010.

70.33.040 County budget for tuberculosis facilities—State services. (Effective January 1, 1977.) In order to maintain adequate tuberculosis hospital facilities and to provide for adequate hospitalization, nursing home and other appropriate facilities and services for the residents of the state of Washington who are or may be suffering from tuberculosis and to assure their proper care, the standards set by the secretary pursuant to RCW 70.33.020 and 70.32.050 and 70.32.060, the legislative authority of each county shall budget annually a sum to provide such services in the county.

If such counties desire to receive state services, they may elect to utilize funds pursuant to this section for the purpose of contracting with the state upon agreement by the state for the cost of providing tuberculosis hospitalization and/or outpatient treatment including laboratory services, or such funds may be retained by the county for operating its own services for the prevention and treatment of tuberculosis or any other community health purposes authorized by law. None of such counties shall be required to make any payments to the state or any other agency from these funds except upon the express consent of the county legislative authority: *Provided*, That if the counties do not comply with the promulgated standards of the department the secretary shall take action to provide such required services and to charge the affected county directly for the provision of these services by the state. [1975 1st ex.s. c 291 § 4. Prior: 1973 1st ex.s. c 213 § 4; 1973 1st ex.s. c 195 § 81; 1971 ex.s. c 277 § 18.]

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Expenditures for tuberculosis control directed—Standards: RCW 70.32.010.

70.33.050 County responsibility for costs of care terminates, when. During the period from August 9, 1971 to January 1, 1972 each of the respective counties enumerated in RCW 70.33.040 will be responsible for the cost of care for hospitalization of patients with tuberculosis from the respective counties, when such patients are unable to pay all or any of the hospitalization costs: *Provided*, That no county enumerated in RCW 70.33.040 shall be liable for payment for such cost of care beyond the amount budgeted and collected in each such county for tuberculosis hospitalization and control as a result of revenue from previous levied tuberculosis taxes or payments in lieu of taxes. [1971 ex.s. c 277 § 19.]

70.33.060 Transfer of assets and liabilities to department, when. From August 9, 1971 in any county enumerated in RCW 70.33.040 currently maintaining a tuberculosis hospital facility, the department will assume all assets and liabilities relating to such hospitals and the counties and the department are authorized and directed to take all steps required by law to effect such transfer. [1971 ex.s. c 277 § 20.]

Chapter 70.35
EASTERN TUBERCULOSIS HOSPITAL DISTRICTS
(Effective until January 1, 1978.)

Sections

70.35.010	Purpose.
70.35.020	Established—Counties constituting—Headquarters county—Powers.
70.35.030	District commission—Members, appointment of—Vacancies, filling of—Duties.
70.35.040	Hospital superintendent—Appointment—Compensation—Qualification—Duties.
70.35.050	District commission—Powers and duties generally—Reimbursement for expenses—Organization and proceedings.
70.35.060	Agreements to use Edgecliff facilities.
70.35.070	Tax levy directed—Disposition of funds—Special fund in headquarters county.
70.35.075	Surplus funds—Uses—Tuberculosis fund—Reports.
70.35.080	Chapter 70.32 RCW provisions inapplicable, when.
70.35.090	State department authority over district.
70.35.100	Payments for treatment at Edgecliff terminated, when.
70.35.110	Contracts to carry out tuberculosis control.

70.35.010 Purpose. The purpose of this chapter is to authorize and establish a tuberculosis hospital district in the state to operate a hospital and supply hospital service for the residents of such district and such others as the district shall deem necessary. [1971 ex.s. c 277 § 5.]

70.35.020 Established—Counties constituting—Headquarters county—Powers. There is hereby established a tuberculosis hospital district in the state, hereinafter in this chapter referred to as the Eastern district, consisting of the following named counties: Okanogan, Chelan, Kittitas, Yakima, Benton, Walla Walla, Franklin, Grant, Douglas, Ferry, Lincoln, Adams, Columbia, Asotin, Garfield, Whitman, Spokane, Stevens and Pend Oreille; the headquarters county of such district shall be Spokane county. Such hospital district is authorized to operate a hospital in the present tuberculosis hospital facilities at Edgecliff in Spokane, Washington. [1971 ex.s. c 277 § 6.]

70.35.030 District commission—Members, appointment of—Vacancies, filling of—Duties. The Eastern tuberculosis hospital district in this state shall be governed by a commission consisting of five members, three of whom shall be members of the legislative authority of the headquarters county to be chosen by and to serve at the pleasure of such legislative authority and two of whom shall be elected by and to serve at the pleasure of an advisory committee to the commission made up of the chief health officers of the respective counties within the district. If such advisory committee shall fail to fill a vacancy within two weeks, the governor shall fill such vacancy and so notify the commission. Initial members of the commission shall be elected or appointed within ten days of August 9, 1971. Such advisory committee shall counsel the commission with respect to commission powers and duties under this chapter. Failure of any member to continue in public office shall result in a commission vacancy which shall be filled as in the case of original appointment or election. [1971 ex.s. c 277 § 7.]

70.35.040 Hospital superintendent—Appointment—Compensation—Qualification—Duties.

The district commission shall appoint and determine the compensation of a hospital superintendent for the district who shall serve at the pleasure of the commission and be a physician duly licensed in this state and qualified in public health and/or specializing in the care of tuberculosis. Such superintendent shall act as administrative officer for the commission, shall be the tuberculosis control officer for the district, and shall be empowered to employ such technical and other personnel as approved by such commission. [1973 1st ex.s. c 213 § 5; 1971 ex.s. c 277 § 8.]

70.35.050 District commission—Powers and duties generally—Reimbursement for expenses—Organization and proceedings. The district commission shall have authority:

(1) To lease existing hospital and equipment and/or other property used in connection therewith, and to pay such rental therefor as the commissioners shall deem proper; to provide hospital service for residents of said district in hospitals located outside the boundaries of said district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions; and said commission shall have the power to contract with other communities, corporations or individuals for the services provided by said district; and they may further receive in said hospital and furnish proper and adequate services to all persons not residents of said district at such reasonable and fair compensation as may be considered proper: *Provided*, That it must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the available facilities of said hospitals, at rates set by the district commissioners;

(2) To enter into any contract with the United States government, or any state or municipality for carrying out any of the powers authorized in this chapter;

(3) To sue and be sued in any court of competent jurisdiction: *Provided*, That all suits against the district shall be brought in the headquarters county of the district; and

(4) To make contracts, employ superintendents, attorneys, and other technical or professional assistants and all other employees; to make contracts with private or public institutions for employee retirement programs; to print and publish information or literature and to do all those things necessary to carry out the purposes of this chapter.

Commission members shall be reimbursed for reasonable expenses incurred in connection with commission business and meetings, including subsistence and lodging and travel while away from their place of residence. Commission organization and proceedings shall be in accordance with that for public hospital district commissions under RCW 70.44.050. [1971 ex.s. c 277 § 9.]

70.35.060 Agreements to use Edgecliff facilities. The commission shall as soon as possible after August 9,

1971 enter into those necessary negotiations and agreements to obtain the use of the present tuberculosis hospital facilities at Edgecliff in Spokane, Washington. [1971 ex.s. c 277 § 10.]

70.35.070 Tax levy directed—Disposition of funds—Special fund in headquarters county. Tuberculosis is a communicable disease and tuberculosis control, including hospitalization, case finding, prevention and follow-up of known cases of tuberculosis represent the basic step in the conquest of this major health problem. In order to carry on work effectively in these fields there shall be levied for tuberculosis hospital district purposes in the district annually a tax in a sum equal to the amount which would be raised by a levy of twelve and one-half cents per thousand dollars of assessed value against the taxable property in the district, or the equivalent thereof, such levy to be made by the board of county commissioners in each county constituting the district, fifty percent of the receipts therefrom to be forwarded quarterly in January, April, July and October of each year by the treasurers of such county, other than the headquarters county where tuberculosis control activities will be carried out by the hospital, to the treasurer of the headquarters district county, who shall be treasurer for the district. The retained fifty percent of the funds are to be used by the chief health officers to carry out tuberculosis control on a local county level pursuant to rules and regulations adopted by the district commission. The sum herein provided for, and any income that may occur from miscellaneous receipts in connection with the aforesaid programs shall be placed in a special fund in the treasury of the headquarters county and obligations incurred for such programs shall be paid from such fund upon order of the district commissioners by the treasurer in the same manner as general county obligations are paid. [1973 1st ex.s. c 195 § 82; 1972 ex.s. c 143 § 1; 1971 ex.s. c 277 § 11.]

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

70.35.075 Surplus funds—Uses—Tuberculosis fund—Reports. Upon certificate of the district tuberculosis control officer or his designee that any county in the district has an unexpended balance of the funds from the above-provided for levy, over and above the amount required for adequate tuberculosis control, including case finding, prevention and follow-up of known cases of tuberculosis within such county, the board of county commissioners may budget and reappropriate the same for such tuberculosis control for the ensuing year, or it may allocate from time to time such certified unexpended balance, or any portion thereof to the county health department, or to a health district encompassing the entire county, for use in furtherance of other communicable disease prevention or control, or for other general county health purposes. The sum herein provided for, that is the fifty percent of such levy, and income that may accrue from miscellaneous receipts in connection with the tuberculosis control program of such

county, shall be placed in the county treasury in a special fund to be known as the tuberculosis fund, and obligations incurred for the tuberculosis control program shall be paid from said fund by the county treasurer in the same manner as general county obligations are paid. The county auditor shall furnish to the legislative authority of the county and the district tuberculosis control officer a monthly report of receipts and disbursements in the tuberculosis fund, which report shall also show balance of cash on hand. [1972 ex.s. c 143 § 5.]

70.35.080 Chapter 70.32 RCW provisions inapplicable, when. On and after January 1, 1972 the provisions of chapter 70.32 RCW as now or hereafter amended shall not apply to the eastern district created by RCW 70.35.020. [1971 ex.s. c 277 § 12.]

70.35.090 State department authority over district. The department of social and health services shall have the same authority over the hospital of a tuberculosis hospital district as its authority over any privately administered hospital in this state. [1971 ex.s. c 277 § 13.]

70.35.100 Payments for treatment at Edgecliff terminated, when. Until January 1, 1972, counties and the state shall continue to pay for the treatment of county patients at Edgecliff in Spokane, Washington, in the same manner as they have during this 1969-1971 fiscal biennium prior to August 9, 1971. [1971 ex.s. c 277 § 14.]

70.35.110 Contracts to carry out tuberculosis control. Each county of the district or health district within a county may contract on such terms as are agreeable to the county commissioners of such county or health district and the commission of the tuberculosis hospital district for the performance of services by the hospital superintendent to carry out tuberculosis control in the county and to appoint the hospital superintendent as the tuberculosis control officer for such county or health district. [1972 ex.s. c 143 § 6.]

Chapter 70.37 HEALTH CARE FACILITIES

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70.37.010 Declaration of public policies—Purpose.

The good health of the people of our state is a most important public concern. The state has a direct interest in seeing to it that health care facilities adequate for good public health are established and maintained in sufficient numbers and in proper locations. The rising costs of care of the infirm constitute a grave challenge not only to health care providers but to our state and the people of our state who will seek such care. It is hereby declared to be the public policy of the state of Washington to assist and encourage the building, providing and utilization of modern, well equipped and reasonably priced health care facilities, and the improvement, expansion and modernization of health care facilities in a manner that will minimize the capital costs of construction, financing and use thereof and thereby the costs to the public of the use of such facilities, and to contribute to improving the quality of health care available to our citizens. In order to accomplish these and related purposes this chapter is adopted and shall be liberally construed to carry out its purposes and objects. [1974 ex.s. c 147 § 1.]

70.37.020 Definitions. As used in this chapter, the following words and terms have the following meanings, unless the context indicates or requires another or different meaning or intent and the singular of any term shall encompass the plural and the plural the singular unless the context indicates otherwise:

(1) "Authority" means the Washington health care facilities authority created by RCW 70.37.030 or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the authority shall be given by law.

(2) "Bonds" mean bonds, notes or other evidences of indebtedness of the authority issued pursuant hereto.

(3) "Health care facility" means any land, structure, system, machinery, equipment or other real or personal property or appurtenances useful for or associated with delivery of inpatient or outpatient health care service or support for such care or any combination thereof which is operated or undertaken in connection with hospital, clinic, health maintenance organization, diagnostic or treatment center, extended care facility, or any facility providing or designed to provide therapeutic, convalescent or preventive health care services, excluding, however, any facility which is maintained by a participant primarily for rental or lease to self-employed health care professionals or as an independent nursing home or other facility primarily offering domiciliary care.

(4) "Participant" means any city, county or other municipal corporation or agency or political subdivision of the state or any corporation, hospital, or health maintenance organization authorized by law to operate non-profit health care facilities.

(5) "Project" means a specific health care facility or any combination of health care facilities, constructed, purchased, acquired, leased, used, owned or operated by a participant, and alterations, additions to, renovations, enlargements, betterments and reconstructions thereof. [1974 ex.s. c 147 § 2.]

70.37.030 Washington health care facilities authority established—Members—Chairman—Terms—Quorum—Vacancies—Travel expenses. There is hereby established a public body corporate and politic, with perpetual corporate succession, to be known as the Washington health care facilities authority. The authority shall constitute a political subdivision of the state established as an instrumentality exercising essential governmental functions. The authority is a "public body" within the meaning of RCW 39.53.010, as now or hereafter amended. The authority shall consist of the governor who shall serve as chairman, the lieutenant governor, the insurance commissioner, the chairman of the Washington state hospital commission, and one member of the public who shall be appointed by the governor, subject to confirmation by the senate, for terms of four years each on the basis of their interest or expertise in health care delivery, the first appointees to be appointed for terms expiring on the second and fourth March 1st, respectively, following enactment of this chapter. In the event that any of the offices referred to shall be abolished the resulting vacancy on the authority shall be filled by the officer who shall succeed substantially to the powers and duties thereof. The members of the authority shall serve without compensation, but shall be entitled to reimbursement, solely from the funds of the authority, for travel expenses incurred in the discharge of their duties under this chapter, subject to the provisions of RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. A majority shall constitute a quorum. [1975-'76 2nd ex.s. c 34 § 157; 1974 ex.s. c 147 § 3.]

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

70.37.040 Washington health care facilities authority—Powers—Special fund bonds—Revenue bonds. (1) The authority is hereby empowered to issue bonds for the construction, purchase, acquisition, rental, leasing or use by participants of projects for which bonds to provide funds therefor have been approved by the authority. Such bonds shall be issued in the name of the authority. They shall not be obligations of the state of Washington or general obligations of the authority but shall be payable only from the special funds created by the authority for their payment. They shall contain a recital on their face that their payment and the payment of interest thereon shall be a valid claim only as against the special fund relating thereto derived by the authority in whole or in part from the revenues received by the authority from the operation by the participant of the health care facilities for which the bonds are issued but that they shall constitute a prior charge over all other charges or claims whatever against such special fund. The lien of any such pledge on such revenues shall attach thereto immediately on their receipt by the authority and shall be valid and binding as against parties having claims of any kind in tort, contract or otherwise against the participant, without recordation thereof and whether or not they have notice thereof. For inclusion in such special funds and for other uses in or for such projects of participants the authority is empowered

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

(2) For the purposes outlined in subsection (1) of this section the authority is empowered to provide for the issuance of its special fund bonds and other limited obligation security instruments subordinate to the first and prior lien bonds, if any, relating to a project or projects of a participant and to create special funds relating thereto against which such subordinate securities shall be liens, but the authority shall not have power to incur general obligations with respect thereto.

(3) The authority may also issue special fund bonds to redeem or to fund or refund outstanding bonds or any part thereof at maturity, or before maturity if subject to prior redemption, with the right in the authority to include various series and issues of such outstanding special fund bonds in a single issue of funding or refunding special fund bonds and to pay any redemption premiums out of the proceeds thereto. Such funding or refunding bonds shall be limited special fund bonds issued in accordance with the provisions of this chapter, including this section and shall not be general obligations of the authority.

(4) Such special fund bonds of either first lien or subordinate lien nature may also be issued by the authority, the proceeds of which may be used to refund already existing mortgages or other obligations on health care facilities already constructed and operating incurred by a participant in the construction, purchase or acquisition thereof.

(5) The authority may also lease to participants, lease to them with option to purchase, or sell to them, facilities which it has acquired by construction, purchase, devise, gift, or leasing: *Provided*, That the terms thereof shall at least fully reimburse the authority for its costs with respect to such facilities, including costs of financing, and provide fully for the debt service on any bonds issued by the authority to finance acquisition by it of the facilities. To pay the cost of acquiring or improving such facilities or to refund any bonds issued for such purpose, the authority may issue its revenue bonds secured solely by revenues derived from the sale or lease of the facility, but which may additionally be secured by mortgage, lease, pledge or assignment, trust agreement or other security device. Such bonds and such security devices shall not be obligations of the state of Washington or general obligations of the authority but shall be payable only from the special funds created by the authority for their payment. Such health care facilities may be acquired, constructed, reconstructed, and improved and may be leased, sold or otherwise disposed of in the manner determined by the authority in its sole discretion and

any requirement of competitive bidding, lease performance bonds or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property of the state, or any agency thereof, is not applicable to any action so taken by the authority. [1974 ex.s. c 147 § 4.]

70.37.050 Requests for financing—Project plan or system—Bond issue, special fund authorized. The authority shall establish rules concerning its exercise of the powers authorized by this chapter. The authority shall receive from applicants requests for the providing of bonds for financing of health care facilities and shall investigate and determine the need and the feasibility of providing such bonds. In cooperation with the participant the authority shall work out and specify a project plan or system and the agreements and contracts to be entered into in order to carry out the purposes and policies of this chapter including contracts with respect to construction, financing, maintenance, operation, or management. Whenever the authority deems it necessary or advisable for the benefit of the public health to provide financing for a health care facility, it shall adopt a system and plan therefor and shall declare the estimated cost thereof, as near as may be, including as part of such cost funds necessary for the expenses incurred in the financing as well as in the construction or purchase or other acquisition or in connection with the rental or other payment for the use thereof, interest during construction, reserve funds and any funds necessary for initial start-up costs, and shall issue and sell its bonds for the purposes of the proposed plan or system: *Provided*, That if a certificate of need is required for the proposed project no such plan and system shall be adopted until such certificate has been issued pursuant to chapter 70.38 RCW by the secretary of the department of social and health services. The authority shall have power as a part of such system or plan to create a special fund or funds for the purpose of defraying the cost of such project and for other projects of the same participant subsequently or at the same time approved by it and for their maintenance, improvement, reconstruction, remodeling and rehabilitation, into which special fund or funds it shall obligate and bind the participant to set aside and pay from the gross revenues of the project or from other sources an amount sufficient to pay the principal and interest of the bonds being issued, reserves and other requirements of the special fund and to issue and sell bonds payable as to both principal and interest out of such fund or funds relating to the project or projects of such participant.

Such bonds shall be executed in such manner, bear such date or dates, mature at such time or times, be in such denominations, be in such form, either coupon or registered, or both, carry such registration privileges, be made transferable, exchangeable, and interchangeable, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption as the authority shall determine. [1974 ex.s. c 147 § 5.]

70.37.060 Bond issues—Terms—Payment—Legal investment, etc. The bonds of the authority shall

be subject to such terms, conditions and covenants and protective provisions as shall be found necessary or desirable by the authority, which may include but shall not be limited to provisions for the establishment and maintenance by the participant of rates for health services of the project, fees and other charges of every kind and nature sufficient in amount and adequate, over and above costs of operation and maintenance and all other costs other than costs and expenses of capital, associated with the project, to pay the principal of and interest on the bonds payable out of the special fund or funds of the project, to set aside and maintain reserves as determined by the authority to secure the payment of such principal and interest, to set aside and maintain reserves for repairs and replacement, to maintain coverage which may be agreed upon over and above the requirements of payment of principal and interest, and for other needs found by the authority to be required for the security of the bonds. When issuing bonds the authority may provide for the future issuance of additional bonds on a parity with outstanding bonds, and the terms and conditions of their issuance.

All bonds issued under the authority of this chapter shall constitute legal investments for trustees and other fiduciaries and for savings and loan associations, banks, and insurance companies doing business in this state. All such bonds and all coupons appertaining thereto shall be negotiable instruments within the meaning of and for all purposes of the negotiable instruments law of this state. [1974 ex.s. c 147 § 6.]

70.37.070 Bond issues—Special trust fund—Payments—Status—Administration of fund. All revenues received by the authority from a participant derived from a particular project of such participant to be applied on principal and interest of bonds or for other bond requirements such as reserves and all other funds for the bond requirements of a particular project received from contributions or grants or in any other form shall be deposited by the authority in qualified public depositories to the credit of a special trust fund to be designated as the authority special bond fund for the particular project or projects producing such revenue or to which the contribution or grant relates. Such fund shall not be or constitute funds of the state of Washington but at all times shall be kept segregated and set apart from other funds. From such funds, the authority shall make payment of principal and interest of the bonds of the particular project or projects; and the authority may set up subaccounts in the bond fund for reserve accounts for payment of principal and interest, for repairs and replacement and for other special requirements of the bonds of the project or projects as determined by the authority. In lieu of itself receiving and handling these moneys as here outlined the authority may appoint trustees, depositories and paying agents to perform the functions outlined and to receive, hold, disburse, invest and reinvest such funds on its behalf and for the protection of the bondholders. [1974 ex.s. c 147 § 7.]

70.37.080 Bond issues—Disposition of proceeds—Special fund. Proceeds from the sale of all bonds of a project issued under the provisions of this chapter received by the authority shall be deposited forthwith by the authority in qualified public depositories in a special fund for the particular project for which the bonds were issued and sold, which money shall not be funds of the state of Washington. Such fund shall at all times be segregated and set apart from all other funds and in trust for the purposes of purchase, construction, acquisition, leasing, or use of a project or projects, and for other special needs of the project declared by the authority, including the manner of disposition of any money not finally needed in the construction, purchase, or other acquisition. Money other than bond sale proceeds received by the authority for these same purposes, such as contributions from a participant or a grant from the federal government may be deposited in the same project fund. Proceeds received from the sale of the bonds may also be used to defray the expenses of the authority in connection with and incidental to the issuance and sale of bonds for the project, as well as expenses for studies, surveys, estimates, inspections and examinations of or relating to the particular project, and other costs advanced therefor by the participant or by the authority. In lieu of itself receiving and handling these moneys in the manner here outlined the authority may appoint trustees, depositories and paying agents to perform the functions outlined and to receive, hold, disburse, invest and reinvest such funds on its behalf and for the protection of the participants and of bondholders. [1974 ex.s. c 147 § 8.]

70.37.090 Payment of authority for expenses incurred in investigating and financing projects. The authority shall have power to require persons applying for its assistance in connection with the investigation and financing of projects to pay fees and charges to provide the authority with funds for investigation, financial feasibility studies, expenses of issuance and sale of bonds and other charges for services provided by the authority in connection with such projects. All other expenses of the authority including compensation of its employees and consultants, expenses of administration and conduct of its work and business and other expenses shall be paid out of such fees and charges, out of contributions and grants to it, out of the proceeds of bonds issued for projects of participants or out of revenues of such projects; none by the state of Washington. The authority shall have power to establish special funds into which such money shall be received and out of which it may be disbursed by the persons and with the procedure and in the manner established by the authority. [1974 ex.s. c 147 § 9.]

70.37.100 Powers of authority. The authority may make contracts, employ or engage engineers, architects, attorneys, and other technical or professional assistants, and such other personnel as are necessary. It may enter into contracts with the United States, accept gifts for its purposes, and exercise any other power reasonably required to implement the principal powers granted in

this chapter. It shall have no power to levy any taxes of any kind or nature and no power to incur obligations on behalf of the state of Washington. [1974 ex.s. c 147 § 10.]

70.37.110 Advancements and contributions by political subdivisions. Any city, county or other political subdivision of this state and any public health care facility is hereby authorized to advance or contribute to the authority real property, money, and other personal property of any kind towards the expense of preliminary surveys and studies and other preliminary expenses of projects which they are by other statutes of this state authorized to own or operate which are a part of a plan or system which has been submitted by them and is under consideration by the authority for assistance under the provisions of this chapter. [1974 ex.s. c 147 § 11.]

70.37.900 Severability—1974 ex.s. c 147. 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 ex.s. c 147 § 12.]

Chapter 70.38 COMPREHENSIVE HEALTH PLANNING

Sections

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70.38.010 Declaration of public policy. It is declared to be the public policy of this state:

(1) That comprehensive planning for promoting, maintaining and assuring a high level of health for all citizens of the state, and for the provision of health services, health manpower, health facilities and other

resources, as well as health planning related to environmental matters is essential to the health, safety and welfare of the people of the state. Such planning is necessary on both a state-wide and regional basis, and must maintain responsiveness to changing health and social needs and conditions. The marshaling of all health resources to assure comprehensive health services of high quality available to every person must be the goal of such planning, which must likewise assure optimum efficiency, effectiveness, equity, coordination and economy in development and implementation to reach that goal.

(2) That the timely construction and expansion of hospital and nursing home facilities and the institution of additional hospital and nursing home services should be accomplished in a manner which is orderly, coherent, timely, economical and consistent with the effective development of necessary and adequate means of providing high quality health care for persons to be served by such facilities without duplication or fragmentation of such facilities. [1971 ex.s. c 198 § 2.]

70.38.020 Definitions. The following words or phrases, as used in this chapter, shall have the following meanings unless the context otherwise requires:

(1) "Board" means the Washington state board of health.

(2) "Construction" means the erection, building, or substantial acquisition, alteration, reconstruction, improvement, extension or modification of a hospital or nursing home, including equipment, the inspection and supervision thereof and other actions necessary thereto, which cost in excess of one hundred thousand dollars.

(3) "Consumer" means any person whose occupation is other than the administration of health activities or the providing of health services, who has no fiduciary obligation to a health facility or other health agency, and who has no material financial interest in the rendering of health services.

(4) "Council" means the state comprehensive health planning advisory council.

(5) "Defined population" means the population that is or may reasonably be expected to be served by an existing or proposed hospital or nursing home. "Defined population" shall also include persons who prefer to receive the services of a particular recognized school or theory of medical care. "Defined population" shall not be limited to a geographical area.

(6) "Department" means the Washington state department of social and health services.

(7) "Hospital" means any institution, place, building or agency, public or private, incorporated or not incorporated:

(a) Which provides or is capable of providing facilities for inpatient care of one or more persons, and inpatient health services, including physician services, through an organized medical staff and continuous nursing services for the prevention, diagnosis or treatment of patients, both surgical and nonsurgical; or

(b) Which qualifies or is required to qualify for a license under chapter 70.41 or 71.12 RCW.

(8) "Nursing home" means any home, place, institution or facility not a hospital:

(a) Which provides or is capable of providing convalescent, chronic or nursing care to sick, invalid, infirm, disabled or convalescent persons in addition to lodging and board; or

(b) Which qualifies or is required to qualify for a license under chapter 18.51 RCW.

(9) "Regional planning agency" means the area-wide comprehensive health planning agency responsible for comprehensive health planning within a defined area.

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

(11) "State planning agency" means the state comprehensive health planning agency as defined by Public Law 89-749 and designated by the governor pursuant to RCW 70.38.030. [1971 ex.s. c 198 § 3.]

70.38.030 State planning agency—Designation—Responsibilities. In order to carry out the purposes of this chapter, the governor shall designate a single state agency to develop and administer a state comprehensive health planning program. The designated state planning agency shall be responsible for implementing the related provisions of this chapter as hereinafter described, the provisions of Public Law 89-749 and subsequent federal legislation.

The state planning agency responsibilities under this chapter shall include but not be limited to the following:

(1) Develop long-range comprehensive health plans, including services, manpower, facilities and other resources, as well as recommendations for priorities.

(2) Develop guidelines as recommendations for government health planning, and health program evaluation.

(3) Provide continuing assistance to the state council and to regional planning agencies in their organization and development of comprehensive health plans.

(4) Approve or reject applicants for recognition as a regional planning agency.

(5) Certify regional planning agencies, as appropriate, as capable to conduct evaluations and make recommendations as to applications for certificates of need.

(6) Develop proposals and recommendations regarding needs for training health manpower.

(7) Coordinate the comprehensive health planning activities with other health planning activities throughout the state. [1971 ex.s. c 198 § 4.]

70.38.040 State comprehensive health planning advisory council—Appointment—Members—Terms—Chairman—Meetings. A state comprehensive health planning advisory council shall be appointed by the governor to advise the state planning agency on comprehensive health planning. The council shall consist of not more than thirty-nine public members plus representatives of appropriate departments of state government, such representatives to serve ex officio. One-third of the initial public members shall serve for terms of one year, one-third for terms of two years, and one-third for terms of three years. Subsequent appointments shall be for a three year term. A majority of the public members shall be consumers as defined herein. Included in the

balance of the membership of the council shall be at least one physician, one dentist, one hospital administrator, one nursing home administrator, one osteopathic physician, one optometrist, one chiropodist, one registered nurse and one chiropractor. The chairman of the council shall be appointed by the governor, and shall serve as chairman at his pleasure, but for no longer than three years. A vice chairman shall be elected by the council. The council shall meet on call of the chairman or on request of the state planning agency, or the department, or a majority of public members, but not less than twice a year. The council may create standing and special committees as necessary and may appoint persons who are not members of the council to serve as advisory or consultant members of any committee in order to carry out the purposes of the council. [1971 ex.s. c 198 § 5.]

70.38.050 Travel expenses. Members of the council and advisory or consultant members of any committee shall be entitled to reimbursement for travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 158; 1971 ex.s. c 198 § 6.]

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

70.38.060 Duties and functions of state comprehensive health planning advisory council. The council shall have the following duties and functions:

(1) Consult with and advise the state planning agency in the conduct of its comprehensive health planning program. The council shall review and comment on project grant applications for public funds that relate to health under section 314, U.S. Public Health Services Act and other state and federal acts that shall from time to time require action by the council.

(2) Provide consultation to the secretary at his request.

(3) Perform such other functions or duties as may be requested. [1971 ex.s. c 198 § 7.]

70.38.070 Regional planning agencies—Establishment—Purpose. There shall be established, in regions established by the governor, regional planning agencies to carry out the purposes of this chapter. The state planning agency shall be responsible, with the advice of the state council, for developing guidelines to assist in the establishment and recognition of regional planning agencies, and for providing planning assistance to such agencies. Any municipal corporation or nonprofit corporation organized under chapter 24.03 RCW, and meeting the state planning agency's guidelines and the criteria set forth in RCW 70.38.080 for regional planning agencies may be eligible for approval by the state planning agency as the regional planning agency for a defined area. [1971 ex.s. c 198 § 8.]

70.38.080 Regional planning agencies—Eligibility criteria for applicant agencies. To be eligible for

approval as a regional planning agency, an applicant agency shall meet the following criteria:

(1) Be able to conduct comprehensive health planning for a defined area which is large enough to provide a basis for development of the health facilities, services, manpower and other resources necessary to assure comprehensive health services.

(2) Provide for representation, through an advisory council or its board of directors, of the major public, private and voluntary agencies concerned with physical, mental and environmental health services, facilities, and manpower and other resources. The applicant may obtain additional representation through subcommittees, technical advisory committees, and other such means.

(3) Provide that a majority of the membership of the advisory council and/or board of directors shall be consumers of health services reflecting geographic, socio-economic, ethnic and age groups in the area. The members who are health care providers shall also represent broad geographic, professional and ethnic elements of the area.

(4) Provide comment by a cross-section of county, and city governments, and public, private and voluntary health agencies in the area as the agency to be responsible for the comprehensive area-wide health planning program, or for organizing such a comprehensive health planning program. [1971 ex.s. c 198 § 9.]

70.38.090 Regional planning agencies—Area of responsibility. An approved regional planning agency shall be recognized by the county, city, and other governmental units and public, private and voluntary health agencies in the area as being responsible for the comprehensive area-wide health planning program. [1971 ex.s. c 198 § 10.]

70.38.100 Regional planning agencies—Powers and duties. An approved regional planning agency shall:

(1) Identify health problems, needs, and resources; recommend goals and objectives; and promote the development and effective utilization of the health resources of the area.

(2) Plan and assure coordination and optimum utilization of current and future health manpower, services, facilities and resources for health care and prevention of disease and injury within the area and with state-wide programs.

(3) Prepare and maintain a long-range plan for all health facilities, services, manpower and other resources within the geographic area served by the agency.

(4) Within sixty days of receipt or a specified further period not to exceed an additional thirty days, approved by the secretary, evaluate all applications for certificates of need within the agency's area and make recommendations to the department.

(5) Establish methods of plan revision and amendment to allow responsiveness to changing needs and conditions.

(6) Individually and in cooperation with other regional planning agencies and the state planning agency, make recommendations and otherwise further the state comprehensive health planning program.

(7) Provide other assistance or certification as required by state or federal legislation or upon request by any state agency. [1971 ex.s. c 198 § 11.]

70.38.110 Certificate of need required prior to commencement of construction—Waiver. Construction shall not be instituted or commenced after August 9, 1971 except upon application for and receipt of a certificate of need as provided herein: *Provided*, That in any case in which, prior to August 9, 1971, there has been proposed the construction of a new facility or the expansion of an existing facility and preliminary plans have been submitted to the planning and construction unit of the division of health of the department of social and health services, the secretary may waive all or any portion of the review process, but said facility shall proceed with its plans in an orderly and expeditious manner and commence construction no later than July 1, 1972. [1971 ex.s. c 198 § 12.]

70.38.120 Certificates of need—Issuance, denial, suspension, revocation or reinstatement—Hearing. Certificates of need shall be issued or denied, suspended, revoked or reinstated by the secretary in accordance with the provisions and intent of this chapter and rules, regulations and policies adopted by the board. Any applicant denied a certificate of need or whose certificate of need has been suspended or revoked shall be afforded an opportunity for an administrative hearing in accordance with chapter 34.04 RCW. [1971 ex.s. c 198 § 13.]

70.38.130 Certificate of need—Application—Contents. Application for a certificate of need shall be made to the department, and shall include the following information:

(1) The general geographic area to be served.

(2) The population to be served, and the characterization of the population, as well as projections of population growth by an official federal or state agency.

(3) A description of the service or services to be provided.

(4) The anticipated demand for the hospital or nursing home service or services to be provided.

(5) Utilization of existing programs within the area to be served offering the same or similar health care services.

(6) The benefit to the community or the population to be served which will result from the proposed project as well as the anticipated impact on other facilities offering the same or similar services in the area.

(7) A statement showing the existing working relationship among the hospitals or nursing homes within the defined population or area to be served.

(8) A description of how the hospital or nursing home fits into the comprehensive health program of the region.

(9) Evaluation and recommendation as to need by the regional planning agency or if no capable regional planning agency has been certified for such purpose, or if no area-wide comprehensive health plan exists, the department may utilize such other resources as it deems necessary and appropriate pursuant to RCW 70.38.170.

(10) Such other information as may reasonably be required by the department. [1971 ex.s. c 198 § 14.]

70.38.140 Certificate of need—Considerations for issuance. A certificate of need shall be issued only where the proposed construction is reasonably necessary to provide health care to the defined population served or to be served as economically as practicable, consistent with high quality standards and in such a manner as to encourage orderly, coherent, timely and economic development of adequate and effective health services in the area, region and state. In making such determinations, the secretary shall take into consideration:

(1) Recommendations of the regional planning agency and, if provided, recommendations of the state planning agency.

(2) The comprehensive health plans and development for the area, region and state, and the relationship of the proposal to such plans and development.

(3) The need for health care services in the area and/or the requirements of the defined population.

(4) The availability and adequacy of health care services in the facilities which are currently serving the defined population and which conform to federal and state standards.

(5) The need for special equipment and services in the area which are not reasonably and economically accessible to the defined population.

(6) The need for research and educational facilities.

(7) The probable economies and improvement in services that may be derived from the operation of joint central services or from joint, cooperative, or shared health resources which are accessible to the defined population.

(8) The availability of sufficient manpower in the professional disciplines required for the facility.

(9) The plans for and development of comprehensive health services and facilities for the defined population to be served. Such services may be either direct or indirect through formal affiliation with other health programs in the area, and shall include preventive, diagnostic, treatment and rehabilitation services.

(10) Whether or not the applicant has obtained all relevant approvals, licenses or consents required by law for its incorporation or establishment.

(11) Relevant information from interested persons and agencies.

(12) The needs of members, subscribers and/or enrollees of institutions and health care plans which operate or support particular hospitals for the purpose of rendering health care to such members, subscribers and/or enrollees.

In the case of an application by a hospital or nursing home established or operated by a religious body or denomination, the needs of the members of such religious body or denomination for care and treatment in accordance with their religious or ethical convictions may be considered to be public need. [1971 ex.s. c 198 § 15.]

70.38.150 Utilization of existing facilities to be considered. In the administration of this chapter, consideration shall be given to the efficiency of the utilization of an existing hospital or nursing home which is or will be serving the defined population to be served by a proposed new hospital or nursing home or expansion of an existing hospital or nursing home so as to avoid unnecessary duplication of facilities, and to encourage maximum efficiency in the use of the hospitals or nursing homes which then serve or will be serving the defined population. [1971 ex.s. c 198 § 16.]

70.38.160 Duration of certificate of need—Renewals. A certificate of need shall be valid for such period of time, not to exceed two years, as may reasonably be required to complete preparation of detailed construction plans, secure necessary funds and building permits and undertake construction of the hospital or nursing home in question: *Provided*, That, with the advice of the regional planning agency or, when appropriate, the other resources utilized by the department, the secretary may renew the certificate for such further periods as may be reasonable where the applicant has shown that substantial and continuing progress towards commencement of construction has been demonstrated. [1971 ex.s. c 198 § 17.]

70.38.170 Authority of secretary. The secretary shall have authority to:

(1) Prepare proposed policies, rules and regulations to be considered for adoption by the board in order to effectuate the provisions and purposes of this chapter, including but not limited to the establishment of requirements for a uniform state-wide system of reporting financial and other operating data.

(2) Enter into contracts with any political subdivision, local health department, school of higher education, or nonprofit agency, and such entities are authorized to enter into contracts with the secretary to carry out the purposes of this chapter.

(3) Enter into contracts with consultants or utilize other evaluative or informational resources wherever necessary and feasible in order to effectuate the purposes of this chapter.

(4) Request hospitals or nursing homes to furnish the department such reports and information as he may require in order to carry out the provisions of this chapter.

(5) Cooperate and coordinate with other state departments having jurisdiction over matters affecting the maintenance, care and social well-being of persons using facilities providing hospital or nursing home services. [1971 ex.s. c 198 § 18.]

70.38.180 Subsequent certificates of need for future proposals. The issuance of a certificate of need for a specific project in a hospital's or nursing home's long-range plan shall not constitute a guarantee that all future proposals contained in that long-range plan will receive a certificate of need; however, the existence of previously certified projects that reduce the overall cost of future projects shall be taken into account by the

regional planning agency and the secretary in reviewing subsequent proposals. [1971 ex.s. c 198 § 19.]

70.38.190 Injunctions against violations. The secretary may bring an action to enjoin a violation or the threatened violation of any of the provisions of this chapter or any rules or regulations adopted by the board or the department pursuant to this chapter, or may bring any legal proceeding authorized by law, including but not limited to the special proceedings authorized in Title 7 RCW, in the superior court in the county in which such violation occurs or is about to occur, or in the superior court of Thurston county. [1971 ex.s. c 198 § 20.]

70.38.200 Civil actions against members, officer or employees of planning agencies or councils restricted. No member, officer or employee of a regional planning agency or its advisory council shall be subject to civil action in any court as the result of any act done or failure to act, or of any statement or opinion made, while discharging his duties as such member, officer or employee: *Provided*, That he acted in good faith with reasonable care and upon proper cause. [1971 ex.s. c 198 § 21.]

70.38.210 Certificate of need prerequisite to hospital applying for or receiving funds under Hospital and Medical Facilities Survey and Construction Act. No hospital constructed after August 9, 1971 shall be eligible to apply for or receive funds under the provisions of chapter 70.40 RCW, the Hospital and Medical Facilities Survey and Construction Act, unless said hospital has applied for and been granted a certificate of need as provided in this chapter. [1971 ex.s. c 198 § 22.]

70.38.900 Severability—1971 ex.s. c 198. 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. [1971 ex.s. c 198 § 23.]

Chapter 70.39

HOSPITAL HEALTH CARE SERVICES— HOSPITAL COMMISSION

Sections

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70.39.010 Purpose. The primary purpose of this chapter is to promote the economic delivery of high quality and effective hospital health care services to the people by establishing a hospital commission with authority over financial disclosure and budget and prospective rate review and other related matters, which will assure all purchasers of hospital health care services that total hospital costs are reasonably related to total services, that hospital rates are reasonably related to aggregate costs, and that such rates are set equitably among all purchasers of these services without undue discrimination.

The legislature finds and declares that rising hospital costs are a vital concern to the people of this state because of the danger which is posed that hospital and health care services are fast becoming out of the economic reach of the majority of our population. It is further declared that health care is a right of the people and one of the primary purposes for which governments are established, and it is, therefore, essential that an effective cost control program be established which will both enable and motivate hospitals to control their spiraling costs. It is the legislative intent, in pursuance of this declared public policy, to provide for uniform measures on a state-wide basis to control hospital costs without the sacrifice of quality of service. [1973 1st ex.s. c 5 § 2.]

70.39.020 Definitions. As used in this chapter:

(1) "Commission" means the hospital commission of the state of Washington as created by this chapter;

(2) "Consumer" means any person whose occupation is other than the administration of health activities or the providing of health services, who has no fiduciary obligation to a health facility or other health agency, and who has no material financial interest in the rendering of health services;

(3) "Hospital" means any health care institution which is required to qualify for a license under RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW, but shall not include any health care institution conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any church or denomination. [1973 1st ex.s. c 5 § 3.]

70.39.030 Hospital commission—Created—Membership. There is hereby created a hospital commission, which shall be a separate and independent commission of the state. The commission shall be composed

of five members appointed by the governor, and generally representative of the public as consumers, labor, business, and hospitals, and shall be individuals concerned with the delivery of quality health care; but in no event shall more than two members have any fiduciary obligation to a health facility or other health agency, nor any direct financial interest in the rendering of health services. In cases when proposed rate increases for osteopathic hospitals are to be considered, the representative of osteopathic hospitals on the technical advisory committee shall replace a hospital representative on the commission. [1973 1st ex.s. c 5 § 4.]

70.39.040 Hospital commission—Terms—Vacancies. Members of the commission shall serve for four-year terms and shall require senate confirmation. No member shall serve on the commission for more than two consecutive terms. A vacancy shall be filled by appointment for the remainder of the unexpired term and the initial appointments and vacancies shall not require senate confirmation until the legislature next convenes. [1973 1st ex.s. c 5 § 5.]

70.39.050 Hospital commission—Officers—Meetings—Compensation. The member representing consumers of health care services shall serve as chairman. The commission shall elect from its members a vice-chairman biennially. Meetings of the commission shall be held as frequently as its duties require. The commission shall keep minutes of its meetings and adopt procedures for the governing of its meetings, minutes, and transactions.

Three members shall constitute a quorum, but a vacancy on the commission shall not impair its power to act. No action of the commission shall be effective unless three members concur therein.

The members of the commission shall receive no compensation but shall be reimbursed for their expenses while attending meetings of the commission in the same manner as legislators engaged in interim committee business as in RCW 44.04.120. [1973 1st ex.s. c 5 § 6.]

70.39.060 Hospital commission—Director—Secretary—Staff—Services. The commission shall appoint a full time executive director and a deputy director and confidential secretary who shall be exempt from the civil service law, chapter 41.06 RCW and who shall perform the duties delegated by the commission. The executive director shall be the chief administrative officer of the commission and shall be subject to its direction.

The secretary of the department of social and health services shall employ and furnish such other staff as are necessary to fulfill the responsibilities and duties of the commission, such staff to be subject to the civil service law, chapter 41.06 RCW, and under the supervision of the commission and its executive director. In addition, the commission may contract with third parties for services necessary to carry out its activities where this will promote economy, avoid duplication of effort, and make best use of available expertise.

Any such contractor or consultant shall be prohibited from releasing, publishing, or otherwise using any information made available to it under its contractual responsibility, without specific permission of the commission.

The commission may apply for and receive and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including the undertaking of special studies and other projects relating to hospital health care costs. [1973 1st ex.s. c 5 § 7.]

70.39.070 Technical advisory committee—Members—Terms—Officers—Meetings—Expenses. In order to assist the commission in carrying out its duties, the governor shall appoint a technical advisory committee, hereinafter referred to as "committee", which shall consist of eleven members as follows:

(1) One member who shall be a certified public accountant licensed pursuant to chapter 18.04 RCW and who shall be knowledgeable in the financial affairs of hospitals.

(2) One member who shall be a health care practitioner licensed under the laws of this state and who shall be knowledgeable in hospital administration.

(3) Five members who shall be representative of the interest of investor-owned, district, not-for-profit, osteopathic, and university hospitals.

(4) One member who shall be representative of consumers of health care.

(5) One member who shall be the secretary of the department of social and health services, or his designee, to provide continuing liaison, data and support from those functions of the department which may affect the responsibilities of the commission.

(6) One member who shall be the director of the planning and community affairs agency, or his designee, to provide continuing liaison with the planning efforts of the comprehensive health planning council.

(7) One member of the commission, elected by the commission.

The members shall serve concurrently and shall have four-year terms. Any vacancy shall be filled by appointment by the governor and an appointee selected to fill such vacancy shall hold office for the balance of the term for which his predecessor was appointed. The committee shall elect from its members a chairman and a vice-chairman to serve concurrently with the chairman. The executive director of the commission shall act as executive secretary to the committee, and the commission shall otherwise offer such staff services and supplies as the committee may require to carry out its responsibilities.

The committee shall meet on call of the chairman of the commission, or on request of a majority of the commission. Members of the committee shall serve without compensation but shall be reimbursed for their expenses in the same manner as members of the commission. [1973 1st ex.s. c 5 § 8.]

70.39.080 Technical advisory committee—Duties. The committee shall have the duty upon the request of the commission to consult with and make recommendations to the commission:

- (1) On matters of policy;
- (2) On rules and regulations proposed by the commission to implement this chapter;
- (3) On analyses and studies of hospital health care costs and related matters which may be undertaken by the commission; and
- (4) On such other matters as the commission may refer. [1973 1st ex.s. c 5 § 9.]

70.39.090 Hospital commission—Subcommittees. To further the purposes of this chapter, the commission may create committees from its membership, and may create such ad hoc advisory committees in specialized fields, related to the functions of hospitals, as it deems necessary, to supplement the resources provided by the technical advisory committee. [1973 1st ex.s. c 5 § 10.]

70.39.100 Uniform system of hospital accounting and reporting. (1) The commission, after study and in consultation with advisory committees, if any, shall establish by the promulgation of rules and regulations pursuant to the Administrative Procedure Act, chapter 34.04 RCW, a uniform system of accounting and financial reporting, including such cost allocation methods as it may prescribe, by which hospitals shall record their revenues, expenses, other income, other outlays, assets and liabilities, and units of service. All hospitals shall adopt the system for their fiscal year period to be effective at such time and date as the commission shall direct. In determining the effective date for reporting requirements, the commission shall be mindful both of the immediate need for uniform hospital reporting information to effectuate the purposes of this chapter and the administrative and economic difficulties which hospitals may encounter in conversion, but in no event shall such effective date be later than two and one-half years from the date of the formation of the commission.

(2) In establishing such accounting systems and uniform reporting procedures, the commission shall take into consideration:

- (a) Existing systems of accounting and reporting presently utilized by hospitals;
- (b) Differences among hospitals according to size; financial structure; methods of payment for services; and scope, type, and method of providing services; and
- (c) Other pertinent distinguishing factors.

(3) The commission shall, where appropriate, provide for modification, consistent with the purposes of this chapter, of reporting requirements to correctly reflect these differences among hospitals, and to avoid otherwise unduly burdensome costs in meeting the requirements of the uniform system of accounting and financial reporting.

(4) The accounting system, where appropriate, shall be structured so as to establish and differentiate costs incurred for patient-related services rendered by hospitals, as distinguished from those incurred with reference to educational research and other nonpatient-related

activities including but not limited to charitable activities of such hospitals. [1973 1st ex.s. c 5 § 11.]

70.39.110 Annual reports by hospitals. (1) Each hospital shall file annually with the commission after the close of the fiscal year:

- (a) A balance sheet detailing the assets, liabilities, and net worth of the hospital;
- (b) A statement of income and expenses;
- (c) Such other reports of the costs incurred in rendering services as the commission may prescribe.

(2) Where more than one licensed hospital is operated by the reporting organization, the information required by this section shall be reported for each hospital separately.

(3) The commission shall require certification of specified financial reports by the hospital's certified public accountant, and may require attestation as to such statements from responsible officials of the hospital that such reports have to the best of their knowledge and belief been prepared in accordance with the prescribed system of accounting and reporting.

(4) All reports, except privileged medical information, filed under this chapter shall be open to public inspection.

(5) The commission shall have the right of inspection of hospital books, audits, and records as reasonably necessary to verify hospital reports. [1973 1st ex.s. c 5 § 12.]

70.39.120 Hospital costs and finances—Analyses and studies—Reports. (1) The commission shall from time to time undertake analyses and studies relating to hospital health care costs and to the financial status of any hospital or hospitals subject to the provisions of this chapter, and may publish and disseminate such information as it deems desirable in the public interest. It shall further require the filing of information concerning the total financial needs of each hospital and the resources available or expected to become available to meet such needs, including the effect of proposals made by area-wide and state comprehensive health planning agencies.

(2) The commission shall also prepare and file such summaries and compilations or other supplementary reports based on the information filed with the commission hereunder as will advance the purposes of this chapter. [1973 1st ex.s. c 5 § 13.]

70.39.130 Report to governor and legislature. The commission shall prepare and, prior to each legislative session beginning in January, transmit to the governor and to members of the legislature an annual report of commission operations and activities for the preceding fiscal year. This report shall include a compilation of all summaries and reports required by this chapter, together with such findings and recommendations as the commission deems necessary. [1973 1st ex.s. c 5 § 14.]

70.39.140 Hospital rates—Review and investigation—Costs—Establishment of rates—Coordination with federal programs. From and after a date not less than twelve months but not more than twenty-four

months after the adoption of the uniform system of accounting and financial reporting required by RCW 70.39.100, as the commission may direct, the commission shall have the power to initiate such reviews or investigations as may be necessary to assure all purchasers of hospital health care services that the total costs of a hospital are reasonably related to the total services offered by that hospital, that the hospital's aggregate revenues as expressed by rates are reasonably related to the hospital's aggregate costs; and that rates are set equitably among all purchasers or classes of purchasers of services without undue discrimination or preference.

In order to properly discharge these obligations, the commission shall have full power to review projected annual revenues and approve the reasonableness of rates proposed to generate that revenue established or requested by any hospital subject to the provisions of this chapter. No hospital shall charge for services at rates other than those established in accordance with the procedures established hereunder.

In the interest of promoting the most efficient and effective use of hospital health care service, the commission may promote and approve alternative methods of rate determination and payment of an experimental nature that may be in the public interest and consistent with the purposes of this chapter.

The commission shall serve as the state agency responsible for coordinating state actions and otherwise responding and relating to the efforts of the cost of living council, or its successor, in planning and implementing federal cost containment programs with respect to hospitals and related health care institutions as authorized by the Federal Economic Stabilization Act of 1970, as now or hereafter amended, and any rules or regulations promulgated thereto. In carrying out this responsibility, the commission may serve as the state agency responsible for recommending increases in rates for hospitals and related health care institutions to the cost of living council, or its successor; may apply to the cost of living council for authorization to administer a control program in Washington state in lieu of the federal controls established and otherwise administered by the cost of living council; may assume another function or role authorized by appropriate federal regulations implementing the Federal Economic Stabilization Act of 1970; or assume any combination of such roles or functions as it may determine will most effectively contain the rising costs of the varying kinds of hospitals and related health care institutions in Washington state. In determining its functions or roles in relation to the efforts to the cost of living council, or its successor, the commission shall seek to ensure coordination, and the reduction of duplicatory cost containment efforts, by the state and federal governments, as well as the diligent fulfillment of the purposes of this chapter and declared public policy and legislative intent herein: *Provided, however,* That in cases where the rates of nursing homes or similar health institutions are subject to review pursuant to the provisions of the Federal Economic Stabilization Act of 1970 or any rules or regulations promulgated thereto, the members of the commission representing hospitals shall not sit in the proceedings nor

vote, and the governor shall appoint an ad hoc member representing nursing homes or similar health institutions in lieu thereof, who shall have the same powers as the other members with respect to such review only. [1974 ex.s. c 163 § 1; 1973 1st ex.s. c 5 § 15.]

70.39.150 Powers and duties of commission. To properly carry out its authority the commission shall:

(1) Immediately upon July 16, 1973 begin to compile all relevant financial and accounting data in order to have available the statistical information necessary to properly conduct rate review and approval. Such data shall include necessary operating expenses, appropriate expenses incurred for rendering services to patients who cannot or do not pay, all properly incurred interest charges, and reasonable depreciation expenses based on the expected useful life of the property and equipment involved. The commission shall define and prescribe by rule and regulation the types and classes of charges which cannot be changed except as provided by the procedure contained in RCW 70.39.160 and it shall also obtain from each such hospital a current rate schedule as well as any subsequent amendments or modifications of that schedule as it may require.

(2) Permit any nonprofit hospital subject to the provisions of this chapter to charge reasonable rates which will permit the hospital to render effective and efficient service in the public interest and on a solvent basis.

(3) Permit any proprietary profit-making hospital subject to the provisions of this chapter to charge reasonable rates which will permit the hospital to render effective and efficient service in the public interest and which includes an allowance for a fair return to stockholders based upon actual investment or the fair value of the investment, whichever is less.

(4) Take into account, in the determination of reasonable rates under this section for each hospital, the recommendations of appropriate area-wide and state comprehensive health planning agencies to ensure compliance with Washington comprehensive health planning law, chapter 70.38 RCW.

(5) Permit, in considering a request for change in or initiating a review of rate schedules or other charges, any hospital subject to the provisions of this chapter to charge rates which will in the aggregate produce sufficient total revenue for the hospital to meet all of the reasonable obligations specified in this chapter. [1973 1st ex.s. c 5 § 16.]

70.39.160 Changes in rates—Procedure. From and after the date determined by the commission pursuant to RCW 70.39.140, no hospital subject to the provisions of this chapter shall change or amend that schedule of rates and charges of the type and class which cannot be changed without prior approval of the commission, except in accordance with the following procedure:

(1) Any request for a change in rate schedules or other charges must be filed in writing in the form and content prescribed by the commission and with such supporting data as the hospital seeking the change deems appropriate. Unless the commission orders otherwise as provided for in subsection (4) of this section, no

hospital shall establish such changes except after notice to the commission of at least thirty days from the time the rate is intended to go into effect. Upon receipt of notice, the commission may suspend the effective date of any proposed change. In any such case a formal written statement of the reasons for the suspension will be promptly submitted to the hospital. Unless suspended, any proposed change shall go into effect upon the date specified in the application.

(2) In any case where such action is deemed necessary, the commission shall promptly, but in any event within thirty days, institute proceedings as to the reasonableness of the proposed changes. The suspension may extend for a period of not more than thirty days beyond the date the change would otherwise go into effect: *Provided*, That should it be necessary, the commission may extend the suspension for an additional thirty days. After the expiration of ninety days from the date the rate is intended to go into effect the new rate will go into effect, if the commission does not approve, disapprove, or modify the request by that time.

(3) Such proposed changes shall be considered at a public hearing, the time and place of which shall be determined by the commission. The hearing shall be conducted by the commission. Evidence for and against the requested change may be introduced at the time of the hearing by any interested party and witnesses may be heard. The hearing may be conducted without compliance with formal rules of evidence.

(4) The commission may, in its discretion, permit any hospital to make a temporary change in rates which shall be effective immediately upon filing and in advance of any review procedure when it deems it in the public interest to do so. Notwithstanding such temporary change in rates, the review procedures set out in this section shall be conducted by the commission as soon thereafter as is practicable.

(5) Every decision and order of the commission in any contested proceeding shall be in writing and shall state the grounds for the commission's conclusions. The effects of such orders shall be prospective in nature. [1973 1st ex.s. c 5 § 17.]

70.39.170 Budget—Expenses—Assessments—Hospital commission account. The commission shall biennially prepare a budget which shall include its estimated income and expenditures for administration and operation for the biennium, to be submitted to the governor for transmittal to the legislature for approval.

Expenses of the commission shall be financed by assessment against hospitals in an amount to be determined biennially by the commission, but not to exceed four one-hundredths of one percent of each hospital's gross operating costs to be levied and collected from and after July 1, 1973 for the provision of hospital services for its last fiscal year ending on or before June 30th of the preceding calendar year. Budgetary requirements in excess of that limit may be financed by a general fund appropriation by the legislature. All moneys collected are to be deposited by the state treasurer in the hospital commission account in the general fund which is hereby created.

Any amounts raised by the collection of assessments from hospitals provided for in this section which are not required to meet appropriations in the budget act for the current fiscal year shall be available to the commission in succeeding years. [1973 1st ex.s. c 5 § 18.]

70.39.180 Rules and regulations—Public hearings—Investigations—Subpoena power. In addition to the powers granted to the commission elsewhere in this chapter, the commission may:

(1) Adopt, amend, and repeal rules and regulations respecting the exercise of the powers conferred by this chapter, subject to the provisions of the Administrative Procedure Act, chapter 34.04 RCW applicable to the promulgation of rules and regulations.

(2) Hold public hearings, conduct investigations, and subpoena witnesses, papers, records, and documents in connection therewith. The commission may administer oaths or affirmations in any hearing or investigation.

(3) Exercise, subject to the limitations and restrictions herein imposed, all other powers which are reasonably necessary or essential to carry out the expressed objects and purposes of this chapter. [1973 1st ex.s. c 5 § 19.]

70.39.190 Review. Any person aggrieved by a final determination of the commission as to any rule, regulation, or determination under the provisions of this chapter shall be entitled to an administrative hearing and judicial review in accordance with the Administrative Procedure Act, chapter 34.04 RCW. [1973 1st ex.s. c 5 § 20.]

70.39.200 Penalties for violations. Every person who shall violate or knowingly aid and abet the violation of this chapter or any valid orders, rules, or regulations thereunder, or who fails to perform any act which it is herein made his duty to perform shall be guilty of a misdemeanor. Following official notice to the accused by the commission of the existence of an alleged violation, each day upon which a violation occurs shall constitute a separate violation. Any person violating the provisions of this chapter may be enjoined from continuing such violation. [1973 1st ex.s. c 5 § 21.]

70.39.900 Severability—1973 1st ex.s. c 5. 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 1st ex.s. c 5 § 22.]

70.39.910 Liberal construction—1973 1st ex.s. c 5. Consistent with the purposes enumerated in RCW 70.39.010, the provisions of this chapter shall be liberally construed, and shall not be limited by any rule of strict construction. [1973 1st ex.s. c 5 § 23.]

Chapter 70.40

HOSPITAL AND MEDICAL FACILITIES SURVEY AND CONSTRUCTION ACT

Sections

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70.40.010 Short title. This chapter may be cited as the "Washington Hospital and Medical Facilities Survey and Construction Act." [1959 c 252 § 1; 1949 c 197 § 1; Rem. Supp. 1949 § 6090–60.]

70.40.020 Definitions. As used in this chapter:

- (1) "Director" means the director of the state department of health;
- (2) "The federal act" means Title VI of the public health service act, as amended, or as hereafter amended by congress;
- (3) "The surgeon general" means the surgeon general of the public health service of the United States;
- (4) "Hospital" includes public health centers and general, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals;
- (5) "Public health center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers;
- (6) "Nonprofit hospital" and "nonprofit medical facility" means any hospital or medical facility owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;
- (7) "Medical facilities" means diagnostic or diagnostic and treatment centers, rehabilitation facilities and nursing homes as those terms are defined in the federal act. [1959 c 252 § 2; 1949 c 197 § 2; Rem. Supp. 1949 § 6090–61.]

70.40.030 Section of hospital and medical facility survey and construction established—Duties. There is hereby established in the state department of health a "section of hospital and medical facility survey and construction" which shall be administered by a full time

salaried head under the supervision and direction of the director. The state department of health, through such section, shall constitute the sole agency of the state for the purpose of:

- (1) Making an inventory of existing hospitals and medical facilities, surveying the need for construction of hospitals and medical facilities, and developing a program of hospital and medical facility construction; and
- (2) Developing and administering a state plan for the construction of public and other nonprofit hospitals and medical facilities as provided in this chapter. [1959 c 252 § 3; 1949 c 197 § 3; Rem. Supp. 1949 § 6090–62.]

70.40.040 General duties of the director. In carrying out the purposes of the chapter the director is authorized and directed:

- (1) To require such reports, make such inspections and investigations and prescribe such regulations as he deems necessary;
- (2) To provide such methods of administration, appoint a head and other personnel of the section and take such other action as may be necessary to comply with the requirements of the federal act and the regulations thereunder;
- (3) To procure in his discretion the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part time or fee for service basis and do not involve the performance of administrative duties;
- (4) To the extent that he considers desirable to effectuate the purposes of this chapter, to enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions public or private;
- (5) To accept on behalf of the state and to deposit with the state treasurer, any grant, gift, or contribution made to assist in meeting the cost of carrying out the purposes of this chapter, and to expend the same for such purpose; and
- (6) To make an annual report to the governor on activities and expenditures pursuant to this chapter, including recommendations for such additional legislation as the director considers appropriate to furnish adequate hospital and medical facilities to the people of this state. [1959 c 252 § 4; 1949 c 197 § 4; Rem. Supp. 1949 § 6090–63.]

70.40.060 Development of program for construction of facilities needed. The director is authorized and directed to make an inventory of existing hospitals and medical facilities, including public nonprofit and proprietary hospitals and medical facilities, to survey the need for construction of hospitals and medical facilities, and, on the basis of such inventory and survey, to develop a program for the construction of such public and other nonprofit hospitals and medical facilities as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital and medical facility services to all the people of the state. [1959 c 252 § 6; 1949 c 197 § 6; Rem. Supp. 1949 § 6090–65.]

70.40.070 Distribution of facilities. The construction program shall provide, in accordance with regulations prescribed under the federal act, for adequate hospital and medical facilities for the people residing in this state and insofar as possible shall provide for their distribution throughout the state in such manner as to make all types of hospital and medical facility service reasonably accessible to all persons in the state. [1959 c 252 § 7; 1949 c 197 § 7; Rem. Supp. 1949 § 6090-66.]

70.40.080 Federal funds—Application for—Deposit, use. The director is authorized to make application to the surgeon general for federal funds to assist in carrying out the survey and planning activities herein provided. Such funds shall be deposited with the state treasurer and shall be available to the director for expenditure in carrying out the purposes of this part. Any such funds received and not expended for such purposes shall be repaid to the treasurer of the United States. [1949 c 197 § 8; Rem. Supp. 1949 § 6090-67.]

70.40.090 State plan—Publication—Hearing—Approval by surgeon general—Modifications. The director shall prepare and submit to the surgeon general a state plan which shall include the hospital and medical facility construction program developed under this chapter and which shall provide for the establishment, administration, and operation of hospital and medical facility construction activities in accordance with the requirements of the federal act and the regulations thereunder. The director shall, prior to the submission of such plan to the surgeon general, give adequate publicity to a general description of all the provisions proposed to be included therein, and hold a public hearing at which all persons or organizations with a legitimate interest in such plan may be given an opportunity to express their views. After approval of the plan by the surgeon general, the director shall publish a general description of the provisions thereof in at least one newspaper having general circulation in the state, and shall make the plan, or a copy thereof, available upon request to all interested persons or organizations. The director shall from time to time review the hospital and medical facility construction program and submit to the surgeon general any modifications thereof which he may find necessary and may submit to the surgeon general such modifications of the state plan, not inconsistent with the requirements of the federal act, as he may deem advisable. [1959 c 252 § 8; 1949 c 197 § 9; Rem. Supp. 1949 § 6090-68.]

70.40.100 Plan shall provide for construction in order of relative needs. The state plan shall set forth the relative need for the several projects included in the construction program determined in accordance with regulations prescribed pursuant to the federal act, and provide for the construction, insofar as financial resources available therefor and for maintenance and operations make possible, in the order of such relative need. [1949 c 197 § 11; Rem. Supp. 1949 § 6090-70.]

70.40.110 Minimum standards for maintenance and operation. The director shall by regulation prescribe minimum standards for the maintenance and operation of hospitals and medical facilities which receive federal aid for construction under the state plan. [1959 c 252 § 9; 1949 c 197 § 10; Rem. Supp. 1949 § 6090-69.]

70.40.120 Applications for construction projects—Diagnostic, treatment centers. Applications for hospital and medical facility construction projects for which federal funds are requested shall be submitted to the director and may be submitted by the state or any political subdivision thereof or by any public or nonprofit agency authorized to construct and operate a hospital or medical facility: *Provided*, That except as may be permitted by federal law no application for a diagnostic or treatment center shall be approved unless the applicant is (1) a state, political subdivision, or public agency, or (2) a corporation or association which owns and operates a nonprofit hospital. Each application for a construction project shall conform to federal and state requirements. [1959 c 252 § 10; 1949 c 197 § 12; Rem. Supp. 1949 § 6090-71.]

70.40.130 Hearing—Approval. The director shall afford to every applicant for a construction project an opportunity for a fair hearing. If the director, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that a project application complies with the requirements of RCW 70.40.120 and is otherwise in conformity with the state plan, he shall approve such application and shall recommend and forward it to the surgeon general. [1949 c 197 § 13; Rem. Supp. 1949 § 6090-72.]

70.40.140 Inspection of project under construction—Certification as to federal funds due. From time to time the director shall inspect each construction project approved by the surgeon general, and, if the inspection so warrants, the director shall certify to the surgeon general that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant. [1949 c 197 § 14; Rem. Supp. 1949 § 6090-73.]

70.40.150 Hospital and medical facility construction fund—Deposits, use. The secretary is hereby authorized to receive federal funds in behalf of, and transmit them to, such applicants or to approve applicants for federal funds and authorize the payment of such funds directly to such applicants as may be allowed by federal law. To achieve that end there is hereby established, separate and apart from all public moneys and funds of this state, a trust fund to be known as the "hospital and medical facility construction fund", of which the state treasurer shall ex officio be custodian. Moneys received from the federal government for construction projects approved by the surgeon general shall be deposited to the credit of this fund, shall be used solely for payments

due applicants for work performed, or purchases made, in carrying out approved projects. Vouchers covering all payments from the hospital and medical facility construction fund shall be prepared by the department of social and health services and shall bear the signature of the secretary or his duly authorized agent for such purpose, and warrants therefor shall be signed by the state treasurer. [1973 c 106 § 31; 1959 c 252 § 11; 1949 c 197 § 15; Rem. Supp. 1949 § 6090-74.]

70.40.160 Obtaining certificate of need under comprehensive health planning act a prerequisite for hospital applying for or receiving funds under this chapter. See RCW 70.38.210.

70.40.900 Severability—1949 c 197. If any provision of this chapter or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. [1949 c 197 § 16; no RRS.]

Chapter 70.41

HOSPITAL LICENSING AND REGULATION

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70.41.010 Declaration of purpose. The primary purpose of this chapter is to promote safe and adequate care of individuals in hospitals through the development, establishment and enforcement of minimum hospital standards for maintenance and operation. To accomplish these purposes, this chapter provides for:

- (1) The licensing and inspection of hospitals;
- (2) The establishment of a Washington state hospital advisory council;
- (3) The establishment by the state board of health of standards, rules and regulations for the construction, maintenance and operation of hospitals;
- (4) The enforcement by the Washington state department of health of the standards, rules and regulations established by the board. [1955 c 267 § 1.]

70.41.020 Definitions. Unless the context clearly indicates otherwise, the following terms, whenever used in this chapter, shall be deemed to have the following meanings:

(1) "Department" means the Washington state department of social and health services;

(2) "Hospital" means any institution, place, building, or agency which provides accommodations, facilities and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care, of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this chapter does not include hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include clinics, or physician's offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include maternity homes, which come within the scope of chapter 18.46 RCW; nor does it include psychiatric hospitals, which come within the scope of chapter 71.12 RCW; nor any other hospital, or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental condition. Furthermore, 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 or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denominations;

(3) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof;

(4) "Board" means the state board of health. [1971 ex.s. c 189 § 8; 1955 c 267 § 2.]

70.41.030 State board of health—Standards, rules and regulations—Fair hearing procedures. The board, shall establish and adopt such minimum standards, rules and regulations pertaining to the construction, maintenance and operation of hospitals, and rescind, amend or modify such rules and regulations from time to time, as are necessary in the public interest, and particularly for the establishment and maintenance of standards of hospitalization required for the safe and adequate care and treatment of patients. All rules and regulations to

become effective shall be filed with the office of the code reviser.

The board shall advise and consult with the department in matters of policy affecting the administration of this chapter, and shall conduct fair hearing procedures as provided in RCW 70.41.130. [1971 ex.s. c 189 § 9; 1955 c 267 § 3.]

70.41.040 Enforcement of chapter—Personnel—Merit system. The enforcement of the provisions of this chapter and the standards, rules and regulations established hereunder by the board, shall be the responsibility of the department which shall cooperate with the joint commission on the accreditation of hospitals. The board shall advise on the employment of personnel and the personnel shall be under the merit system or its successor. [1955 c 267 § 4.]

70.41.080 Fire protection. Standards for fire protection and the enforcement thereof, with respect to all hospitals to be licensed hereunder shall be the responsibility of the state fire marshal, who shall adopt, after approval by the board, such recognized standards as may be applicable to hospitals for the protection of life against the cause and spread of fire and fire hazards. The department upon receipt of an application for a license, shall submit to the state fire marshal in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the state fire marshal or his deputy, shall make an inspection of the hospital to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as adopted pursuant to this chapter, he shall promptly make a written report to the hospital and to the department listing the corrective actions required and the time allowed for accomplishing such corrections. The applicant or licensee shall notify the state fire marshal upon completion of any corrections required by him, and the state fire marshal, or his deputy, shall make a reinspection of such premises. Whenever the hospital to be licensed meets with the approval of the state fire marshal, he shall submit to the department a written report approving the hospital with respect to fire protection, and such report is required before a full license can be issued. The state fire marshal shall make or cause to be made inspections of such hospitals at least once a year.

In cities which have in force a comprehensive building code, the provisions of which are determined by the state fire marshal to be equal to the minimum standards of the state fire marshal's code for hospitals, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the state fire marshal or his deputy and they shall jointly approve the premises before a full license can be issued. [1955 c 267 § 8.]

State fire marshal: Chapter 48.48 RCW.

70.41.090 Hospital license required. After January 1, 1956, no person or governmental unit of the state of Washington, acting separately or jointly with any other

person or governmental unit, shall establish, maintain, or conduct a hospital in this state, or use the word "hospital" to describe or identify an institution, without a license under this chapter: *Provided*, That the provisions of this section shall not apply to state mental institutions and psychiatric hospitals which come within the scope of chapter 71.12 RCW. [1955 c 267 § 9.]

70.41.100 Applications for licenses and renewals—Fees. An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires which may include affirmative evidence of ability to comply with the standards, rules and regulations as are lawfully prescribed hereunder. An application for renewal of license shall be made to the department upon forms provided by it and submitted thirty days prior to the date of expiration of the license. Each application for a license or renewal thereof by a hospital as defined by this chapter shall be accompanied by an annual fee based on the number of beds in said hospital, excluding bassinets for the newborn, as follows: Less than fifty beds, twenty dollars; fifty beds or more, but less than one hundred twenty-five, thirty-five dollars; one hundred twenty five beds or more, fifty dollars: *Provided*, That no fee shall be required of government operated institutions. [1955 c 267 § 10.]

70.41.110 Licenses, provisional licenses—Issuance, duration, assignment, posting. Upon receipt of an application for license and the license fee, the department shall issue a license or a provisional license if the applicant and the hospital facilities meet the requirements of this chapter and the standards, rules and regulations established by the board. All licenses issued under the provisions of this chapter shall expire on a date to be set by the board, but no license issued pursuant to this chapter shall exceed twelve months in duration: *Provided*, That when the annual license renewal date of a previously licensed hospital is set by the board on a date less than twelve months prior to the expiration date of a license in effect at the time of reissuance, the license fee shall be prorated on a monthly basis and a credit be allowed at the first renewal of a license for any period of one month or more covered by the previous license. Each license shall be issued only for the premises and persons named in the application, and no license shall be transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises.

If there be a failure to comply with the provisions of this chapter or the standards, rules and regulations promulgated pursuant thereto, the department may in its discretion issue to an applicant for a license, or for the renewal of a license, a provisional license which will permit the operation of the hospital for a period to be determined by the department, but shall not exceed twelve months, unless approved by the board. [1971 ex.s. c 247 § 3; 1955 c 267 § 11.]

70.41.120 Inspection of hospitals—Alterations or additions, new facilities. The department shall make or

cause to be made at least yearly an inspection of all hospitals. Every inspection of a hospital may include an inspection of every part of the premises. The department may make an examination of all phases of the hospital operation necessary to determine compliance with the law and the standards, rules and regulations adopted thereunder. Any licensee or applicant desiring to make alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, comply with the regulations prescribed by the board.

No hospital licensed pursuant to the provisions of this chapter shall be required to be inspected or licensed under other state laws or rules and regulations promulgated thereunder, or local ordinances, relative to hotels, restaurants, lodging houses, boarding houses, places of refreshment, nursing homes, maternity homes, or psychiatric hospitals. [1955 c 267 § 12.]

70.41.130 Denial, suspension, revocation of license—Hearings. The department is authorized to deny, suspend, or revoke a license or provisional license in the manner prescribed herein in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards, rules and regulations established hereunder. The department shall issue an order to the applicant or licensee giving notice of any rejection, revocation, or suspension, which order shall become final thirty days after the date of mailing: *Provided*, That the applicant or licensee does not within thirty days from the date of mailing of the department's order or rejection, revocation, or suspension of license, make written application to the board for a hearing upon receipt of which the board shall fix a time for such hearing and shall give the applicant or licensee a notice of the time fixed therefor. The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the board. The board shall render its decision affirming, modifying, or setting aside the order of the department which decision in the absence of an appeal therefrom as provided by this chapter, shall become final thirty days after the date of mailing. [1955 c 267 § 13.]

70.41.140 Denial, suspension, revocation of license—Appeals. Within thirty days after the date of mailing of the decision of the board, the interested applicant or licensee may appeal to the superior court of the county of Thurston and such appeal shall be heard as a case in equity, but upon such appeal only such issues of law may be raised as were properly included in the hearing before the board. Proceedings of every such appeal shall be informal and summary, but full opportunity to be heard upon the issues of law shall be had before judgment is pronounced. Such appeal shall be perfected by serving a notice of appeal on the chairman of the board by personal service, or by mailing a copy thereof to the board and by filing the notice of appeal, together with proof of service thereof, with the clerk of the court. The service and the filing, together with proof of the notice of appeal, all within thirty days shall be jurisdictional. The board shall within ten days after

receipt of such notice of appeal serve and file a notice of appearance upon appellant or his attorney of record and such appeal shall thereupon be deemed at issue. The board shall serve upon the appellant and file with the clerk of the court before hearing, a certified copy of the complete record of the administrative proceedings which shall, upon being so filed, become the record in such case. [1955 c 267 § 14.]

70.41.150 Denial, suspension, revocation of license—Disclosure of information. Information received by the board or the department through filed reports, inspection, or as otherwise authorized under this chapter, shall not be disclosed publicly in such manner as to identify individuals or hospitals, except in a proceeding involving the question of licensure. Such records of the department shall at all times be available to the council and the members thereof. [1955 c 267 § 15.]

70.41.160 Remedies available to department—Duty of attorney general. Notwithstanding the existence or pursuit of any other remedy, the department may, in the manner provided by law, upon the advice of the attorney general who shall represent the department and the board in the proceedings, maintain an action in the name of the state for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a hospital without a license under this law. [1955 c 267 § 16.]

70.41.170 Operating or maintaining unlicensed hospital—Penalty. Any person operating or maintaining a hospital without a license under this chapter shall be guilty of a misdemeanor, and each day of operation of an unlicensed hospital shall constitute a separate offense. [1955 c 267 § 17.]

70.41.180 Physicians' services. Nothing contained in this chapter shall in any way authorize the board to establish standards, rules and regulations governing the professional services rendered by any physician. [1955 c 267 § 18.]

70.41.190 Retention and preservation of records of patients. Unless specified otherwise by the board, a hospital shall retain and preserve all medical records which relate directly to the care and treatment of a patient for a period of no less than ten years following the most recent discharge of the patient; except the records of minors, which shall be retained and preserved for a period of no less than three years following attainment of the age of eighteen years, or ten years following such discharge, whichever is longer.

If a hospital ceases operations, it shall make immediate arrangements, as approved by the department, for preservation of its records.

The board shall by regulation define the type of records and the information required to be included in the medical records to be retained and preserved under

this section; which records may be retained in photographic form pursuant to chapter 5.46 RCW. [1975 1st ex.s. c 175 § 1.]

70.41.900 Severability—1955 c 267. If any part, or parts, of this chapter shall be held unconstitutional, the remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included herein, if any such remaining part can then be administered for the purpose of establishing and maintaining standards for hospitals. [1955 c 267 § 21.]

Chapter 70.44 PUBLIC HOSPITAL DISTRICTS

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Rendering emergency care, immunity from civil liability: RCW 18.71.220.

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70.44.005 Purpose. The purpose of this chapter is to authorize the establishment of public hospital districts to own and operate hospitals, nursing homes, extended care, outpatient, and rehabilitative facilities, contiguous with or within such facilities or hospitals, and ambulances, and to supply hospital, nursing home, extended care, outpatient, rehabilitative, health maintenance, and ambulance service for the residents of such districts and other persons: *Provided*, That hospital districts will not construct nursing homes when such facilities are already available: *Provided further*, That districts located in counties having a population of over eighteen thousand may not construct nursing homes. [1974 ex.s. c 165 § 1; 1945 c 264 § 1; Rem. Supp. 1945 § 6090–30. Formerly RCW 70.44.010, part.]

70.44.007 Definitions. As used in this chapter, the following words shall have the following meanings:

(1) The words "other health care facilities" shall mean nursing home, extended care, long-term care, outpatient, and rehabilitative facilities.

(2) The words "other health care services" shall mean nursing home, extended care, long-term care, outpatient, rehabilitative, health maintenance, and ambulance services. [1974 ex.s. c 165 § 5.]

70.44.010 Districts authorized. Municipal corporations, to be known as public hospital districts, are hereby authorized and may be established within the several counties of the state as hereinafter provided. [1947 c 225 § 1; 1945 c 264 § 2; Rem. Supp. 1947 § 6090–31. FORMER PART OF SECTION: 1945 c 264 § 1 now codified as RCW 70.44.005.]

70.44.015 Validation of existing districts. Each and all of the respective areas of land heretofore attempted to be organized into public hospital districts under the provisions of this chapter are validated and declared to be duly existing hospital districts having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the board of county commissioners of the county in question, and by the files of such districts. [1955 c 135 § 2.]

70.44.020 Resolution—Petition for county-wide district—Conduct of elections. At any general election or at any special election which may be called for that purpose the board of county commissioners of a county may, or on petition of ten percent of the electors of the

county based on the total vote cast in the last general county election, shall, by resolution, submit to the voters of the county the proposition of creating a public hospital district coextensive with the limits of the county. The petition shall be filed with the county auditor, who shall within fifteen days examine the signatures thereon and certify to the sufficiency thereof, and for that purpose he shall have access to all registration books in the possession of election officers in the county. If the petition is found to be insufficient, it shall be returned to the persons filing it, who may amend or add names thereto for ten days, when it shall be returned to the auditor, who shall have an additional fifteen days to examine it and attach his certificate thereto. No person signing the petition may withdraw his name therefrom after filing. When the petition is certified as sufficient, the auditor shall forthwith transmit it, together with his certificate of sufficiency attached thereto, to the commissioners, who shall immediately transmit the proposition to the supervisor of elections or other election officer of the county, and he shall submit the proposition to the voters at the next general election or if such petition so requests, he shall call a special election on such proposition not less than thirty nor more than ninety days from the date of said certificate. The notice of the election shall state the boundaries of the proposed district and the object of the election, and shall in other respects conform to the requirements of law governing the time and manner of holding elections. In submitting the question to the voters, the proposition shall be expressed on the ballot substantially in the following terms:

For public hospital district No.

Against public hospital district No.

[1955 c 135 § 1; 1945 c 264 § 3; Rem. Supp. 1945 § 6090-32.]

70.44.025 Creation of district—Special election.

After this act [1945 c 264] becomes effective a special election may be called at any time by the election board prior to the next general election, to create such hospital districts where the petition for the creation of such districts so provide or were ordered by the county commissioners. [1945 c 264 § 20; Rem. Supp. 1945 § 6090-49.]

70.44.030 Petition for lesser district—Procedure.

Any petition for the formation of a public hospital district may describe a less area than the entire county in which the petition is filed, the boundaries of which shall follow the then existing precinct boundaries and not divide any voting precinct; and in the event that such a petition is filed containing not less than ten percent of the voters of the proposed district who voted at the last general election, certified by the auditor in like manner as for a county-wide district, the board of county commissioners shall fix a date for a hearing on such petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the date of the hearing, together with a notice stating the time of the meeting when such petition will be heard. Such publications required by this chapter shall be in a newspaper published in the proposed or established public hospital district, or, if there be no such newspaper, then in a

newspaper published in the county in which such district is situated, and of general circulation in such county. The hearing on such petition may be adjourned from time to time, not exceeding four weeks in all. If upon the final hearing the board of county commissioners shall find that any lands have been unjustly or improperly included within the proposed public hospital district the said board shall change and fix the boundary lines in such manner as it shall deem reasonable and just and conducive to the welfare and convenience, and make and enter an order establishing and defining the boundary lines of the proposed public hospital district: *Provided*, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of such lands. Thereafter the same procedure shall be followed as prescribed in this chapter for the formation of a public hospital district including an entire county, except that the petition and election shall be confined solely to the lesser public hospital district. [1945 c 264 § 4; Rem. Supp. 1945 § 6090-33.]

70.44.035 Petition for district lying in more than one county—Procedure.

Any petition for the formation of a public hospital district may describe an area lying in more than one county, the boundaries of which shall follow the then existing precinct boundaries and not divide a voting precinct; and if a petition is filed with the county auditor of the respective counties in which a portion of the proposed district is located, containing not less than ten percent of the voters of that area of each county of the proposed district who voted at the last general election, certified by the said respective auditors in like manner as for a county-wide district, the board of county commissioners of each of the counties in which a portion of the proposed district is located shall fix a date for a hearing on the petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the hearing, together with a notice stating the time of the meeting when the petition will be heard. The publication required by this chapter shall be in a newspaper published in the portion of each county lying within the proposed district, or if there be no such newspaper published in any such portion of a county, then in one published in the county wherein such portion of said district is situated, and of general circulation in the county. The hearing before the respective county commissioners may be adjourned from time to time not exceeding four weeks in all. If upon the final hearing the respective boards of county commissioners find that any land has been unjustly or improperly included within the proposed district they may change and fix the boundary lines of the portion of said district located within their respective counties in such manner as they deem reasonable and just and conducive to the welfare and convenience, and enter an order establishing and defining the boundary lines of the proposed district located within their respective counties: *Provided*, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of the land to be so

included. Thereafter the same procedure shall be followed as prescribed for the formation of a district including an entire county, except that the petition and election shall be confined solely to the portions of each county lying within the proposed district. [1953 c 267 § 1.]

70.44.040 Elections—Vacancies—Procedure—Boundaries—Consolidations—Terms of commissioners. The provisions of Title 54 RCW relating to elections and procedure of the commission, except vacancies occurring therein, and boundaries and consolidation of public utility districts shall govern public hospital districts, except that the total vote cast upon the proposition to form the district shall exceed forty percent of the total number of votes cast in the precincts comprising the districts at the next preceding general and county election, and except that hospital district commissioners shall hold office for the term of six years and until their successors are elected and qualified, each term to commence on the second Monday in January in each year following the election. At the election at which the proposition is submitted to the voters as to whether a district shall be formed, three commissioners shall be elected to hold office, respectively, for the terms of two, four, and six years. All candidates shall be voted upon by the entire district, and the candidate residing in commissioner district No. 1 receiving the highest number of votes in the hospital district shall hold office for the term of six years; the candidate residing in commissioner district No. 2 receiving the highest number of votes in the hospital district shall hold office for the term of four years; and the candidate residing in commissioner district No. 3 receiving the highest number of votes in the hospital district shall hold office for the term of two years. Each term shall date from the time above specified following the election, but shall also include the period intervening between the election and the beginning of the regular terms specified in this section: *Provided*, That in public hospital districts encompassing portions of more than one county, the total vote cast upon the proposition to form the district shall exceed forty percent of the total number of votes cast in each portion of each county lying within the proposed district at the next preceding general county election. The portion of said proposed district located within each county shall constitute a separate commissioner district. There shall be three district commissioners whose terms shall be six years. Each district shall be designated by the name of the county in which it is located. All candidates for commissioners shall be voted upon by the entire district. Not more than one commissioner shall reside in any one district: *Provided further*, That in the event there are only two districts then two commissioners may reside in one district. The term of each commissioner shall commence on the second Monday in January in each year following his election. At the election at which the proposition is submitted to the voters as to whether a district shall be formed, three commissioners shall be elected to hold office, respectively, for the terms of two, four, and six years. The candidate receiving the highest number of votes within the district, as constituted by

said election, shall serve a term of six years; the candidate receiving the next highest number of votes shall hold office for a term of four years; and the candidate receiving the next highest number of votes shall hold office for a term of two years: *Provided further*, That the holding of each such term of office shall be subject to the residential requirements for district commissioners hereinbefore set forth in this section. [1957 c 11 § 1; 1955 c 82 § 1; 1953 c 267 § 2; 1947 c 229 § 1; 1945 c 264 § 5; Rem. Supp. 1947 § 6090–34.]

70.44.042 Commissioner districts may be abolished—Residence of candidates for positions. Notwithstanding any provision in RCW 70.44.040 to the contrary, any board of public hospital district commissioners may, by resolution, abolish commissioner districts and permit candidates for any position on the board to reside anywhere in the public hospital district. [1967 c 227 § 2.]

70.44.045 Commissioners—Vacancies. A vacancy in the office of commissioner shall occur by death, resignation, removal, conviction of felony, nonattendance at meetings of the commission for sixty days, unless excused by the commission, by any statutory disqualification, or by any permanent disability preventing the proper discharge of his duty. A vacancy shall be filled at the next general election; the vacancy in the interim to be filled by appointment by the remaining commissioners within twenty days from the date of such vacancy, or in the event the remaining commissioners do not fill the vacancy within said time then the county commissioners of the county in which said district is located shall fill said vacancy within twenty days thereafter. If more than one vacancy exists at the same time a special election shall be called by the county election supervisor upon the request of any remaining commissioner and if there is none, then by the supervisor. The election shall be held not more than forty days after the occurrence of the vacancies. [1955 c 82 § 2.]

70.44.050 Commissioners—Compensation—Expenses—Insurance—Resolutions by majority vote—Officers—Rules—Seal—Records. A district may provide by resolution for the payment of compensation to each of its commissioners at a rate not exceeding twenty-five dollars for each day or major part thereof devoted to the business of the district, and days upon which he attends meetings of the commission of his own district, or meetings attended by one or more commissioners of two or more districts called to consider business common to them, except that the total compensation paid to such commissioner during any one year shall not exceed one thousand two hundred dollars: *Provided*, That commissioners may not be compensated for services performed of a ministerial or professional nature. Any district providing group insurance for its employees, covering them, their immediate family, and dependents, may provide insurance for its commissioners with the same coverage. Each commissioner shall be reimbursed for reasonable expenses actually incurred in connection with such business and meetings, including

his subsistence and lodging and travel while away from his place of residence. No resolution shall be adopted without a majority vote of the whole commission. The commission shall organize by election of its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings of the commission shall be by motion or resolution recorded in a book or books kept for such purpose, which shall be public records. [1975 c 42 § 1; 1965 c 157 § 1; 1945 c 264 § 15; Rem. Supp. 1945 § 6090-44.]

70.44.051 Increase in number of commissioners—
Authorized. In addition to the procedures enumerated in RCW 70.44.020, 70.44.030 and 70.44.035, the board of public hospital district commissioners in an existing intracounty or intercounty district may be increased to five or to seven members; and any district created after June 8, 1967 may have three, five or seven commissioners. [1967 c 77 § 1.]

70.44.053 Increase in number of commissioners—
Proposition to be submitted to voters. At any general or special election which may be called for that purpose the board of public hospital district commissioners may, or on petition of ten percent of the electors based on the total vote cast in the last general election in the district shall, by resolution, submit to the voters of the district the proposition increasing the number of commissioners to any number authorized in RCW 70.44.051. [1967 c 77 § 2.]

70.44.055 Increase in number of commissioners—
Number to be elected from commissioner districts, at large positions. (1) (a) In intracounty districts having five commissioners, one shall be elected from each commissioner district as provided in RCW 70.44.040, and two shall be elected at large from the hospital district by positions No. 4 and No. 5.

(b) In intercounty districts having five commissioners, two shall be elected from each commissioner district by positions No. 1 and No. 2, and one shall be elected at large from the hospital district.

(2) (a) In intracounty districts having seven commissioners, two shall be elected from each commissioner district by positions No. 1 and No. 2, and one shall be elected at large from the entire hospital district.

(b) In intercounty districts having seven commissioners, three shall be elected from each commissioner district by positions No. 1, No. 2 and No. 3, and one shall be elected at large from the entire hospital district. [1967 c 77 § 3.]

70.44.057 Increase in number of commissioners—
Staggering terms of additional commissioners in existing districts—New districts. (1) In all existing public hospital districts in which an increase in membership of the board of hospital district commissioners is proposed, the district commissioners shall, by resolution adopted in advance of any elections therefor, provide for the staggering of terms of the additional commissioner positions so that, as nearly as is mathematically possible, one-

third of the expanded board shall be elected every two years.

(2) When a new district is proposed with more than three commissioners, the county commissioners of the counties affected shall adopt the resolution prescribed in subsection (1) of this section. [1967 c 77 § 4.]

70.44.060 Powers and duties. All public hospital districts organized under the provisions of this chapter shall have power:

(1) To make a survey of existing hospital and other health care facilities within and without such district.

(2) To construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop and regulate, sell and convey all lands, property, property rights, equipment, hospital and other health care facilities and systems for the maintenance of hospitals, buildings, structures, and any and all other facilities, and to exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of the same or property of any kind appurtenant thereto, and such right of eminent domain shall be exercised and instituted pursuant to a resolution of the commission and conducted in the same manner and by the same procedure as in or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: *Provided*, That no public hospital district shall have the right of eminent domain and the power of condemnation against any health care facility: *And provided, further*, That no hospital district organized and existing in districts having more than twenty-five thousand population have any of the rights herein enumerated without the prior written consent of all existing hospital facilities within the boundaries of such hospital district.

(3) To lease existing hospital and other health care facilities and equipment and/or other property used in connection therewith, including ambulances, and to pay such rental therefor as the commissioners shall deem proper; to provide hospital and other health care services for residents of said district by facilities located outside the boundaries of said district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions; and said hospital district shall have the power to contract with other communities, corporations, or individuals for the services provided by said hospital district; and they may further receive in said hospitals and other health care facilities and furnish proper and adequate services to all persons not residents of said district at such reasonable and fair compensation as may be considered proper: *Provided*, That it must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the available hospital and other health care facilities of said district, at rates set by the district commissioners.

(4) For the purpose aforesaid, it shall be lawful for any district so organized to take, condemn and purchase, lease, or acquire, any and all property, and property rights, including state and county lands, for any of the

purposes aforesaid, and any and all other facilities necessary or convenient, and in connection with the construction, maintenance, and operation of any such hospitals and other health care facilities, subject, however, to the applicable limitations provided in subsection (2).

(5) To contract indebtedness or borrow money for corporate purposes on the credit of the corporation or the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, and to issue (a) revenue bonds or warrants therefor payable solely out of a special fund or funds into which the district may pledge such amount of the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, to pay the same as the commissioners of the district may determine, such revenue bonds or warrants to be issued in the same manner and subject to the same provisions as provided for the issuance of revenue bonds or warrants by cities or towns under the Municipal Revenue Bond Act, chapter 35.41 RCW, as may hereafter be amended or (b) general obligation bonds therefor in the manner and form as provided in RCW 70.44.110 to 70.44.130, inclusive, as may hereafter be amended; and to assign or sell hospital accounts receivable, and accounts receivable for the use of other facilities or services that the district is or hereafter may be authorized by law to provide, for collection with or without recourse.

(6) To raise revenue by the levy of an annual tax on all taxable property within such public hospital district not to exceed seventy-five cents per thousand dollars of assessed value or such further amount as has been or shall be authorized by a vote of the people: *Provided further*, That the public hospital districts are hereby authorized to levy such a general tax in excess of said seventy-five cents per thousand dollars of assessed value when authorized so to do at a special election conducted in accordance with and subject to all of the requirements of the Constitution and the laws of the state of Washington now in force or hereafter enacted governing the limitation of tax levies. The said board of district commissioners is hereby authorized and empowered to call a special election for the purpose of submitting to the qualified voters of the hospital district a proposition to levy a tax in excess of the seventy-five cents per thousand dollars of assessed value herein specifically authorized. The superintendent shall prepare a proposed budget of the contemplated financial transactions for the ensuing year and file the same in the records of the commission on or before the first Monday in September. Notice of the filing of said proposed budget and the date and place of hearing on the same shall be published for at least two consecutive weeks in a newspaper printed and of general circulation in said county. On the first Monday in October the commission shall hold a public hearing on said proposed budget at which any taxpayer may appear and be heard against the whole or any part of the proposed budget. Upon the conclusion of said hearing, the commission shall, by resolution, adopt the budget as finally determined and fix the final amount of

expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper county officer of the county in which such public hospital district is located in the same manner as is or may be provided by law for the certification and collection of port district taxes. The commission is authorized, prior to the receipt of taxes raised by levy, to borrow money or issue warrants of the district in anticipation of the revenue to be derived by such district from the levy of taxes for the purpose of such district, and such warrants shall be redeemed from the first money available from such taxes when collected, and such warrants shall not exceed the anticipated revenues of one year, and shall bear interest at a rate or rates as authorized by the commission.

(7) To enter into any contract with the United States government or any state, municipality, or other hospital district, or any department of those governing bodies, for carrying out any of the powers authorized by this chapter.

(8) To sue and be sued in any court of competent jurisdiction: *Provided*, That all suits against the public hospital district shall be brought in the county in which the public hospital district is located.

(9) To make contracts, employ superintendents, attorneys, and other technical or professional assistants and all other employees; to make contracts with private or public institutions for employee retirement programs; to print and publish information or literature; and to do all other things necessary to carry out the provisions of this chapter. [1974 ex.s. c 165 § 2; 1973 1st ex.s. c 195 § 83; 1971 ex.s. c 218 § 2; 1970 ex.s. c 56 § 85; 1969 ex.s. c 65 § 1; 1967 c 164 § 7; 1965 c 157 § 2; 1949 c 197 § 18; 1945 c 264 § 6; Rem. Supp. 1949 § 6090-35.]

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

Purpose—1970 ex.s. c 56: See note following RCW 39.44.030.

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9).

Eminent domain by cities: Chapter 8.12 RCW.

Limitation on levies: State Constitution Art. 7 § 2 (Amendments 55 and 59); RCW 84.52.050.

Port districts, collection of taxes: RCW 53.36.020.

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.

70.44.061 Powers and duties—Sales and leases of surplus property. The board of commissioners of any public hospital district may lease out or may sell and convey at public or private sale, surplus property of the district if the board has determined by resolution adopted by unanimous vote of all members of the board that such property is not and will not be needed for the district's purposes, nor for operation of its public hospitals: *Provided*, That in leasing or selling real estate the board shall have obtained not more than one year prior to date of sale a written appraisal of the value of such real estate by at least two disinterested appraisers concurring in and signing the appraisal, who must be licensed under the laws of this state as real estate appraisers or as real estate brokers, and that the board

shall have published a call for bids upon such real estate once a week for two successive weeks in a legal newspaper of general circulation in the districts, and that the sale price received be not less than ninety percent of such appraised value of the real estate sold: *Provided further*, That if such appraised value of property proposed to be sold is more than one hundred thousand dollars then before making any sale thereof the question of making a sale of the property shall be submitted to the voters of the district at a general or special election and be determined by majority vote therein. In the event of a sale, not less than one-tenth of the total purchase price shall be paid on the date of execution of the contract for sale, and one-tenth shall be paid annually thereafter until the full purchase price has been paid, but any purchaser may make full payment at any time. All unpaid deferred payments shall draw interest at a rate not less than six percent per annum; or in the alternative, such sale may be effected on such terms and conditions as may be determined by resolution of the board of commissioners: *Provided*, That such sale is approved and confirmed by decree of the superior court in the county where such property is located, after publication of notice of hearing is given as fixed and directed by such court. [1970 ex.s. c 7 § 1; 1963 c 102 § 1.]

70.44.070 Superintendent—Appointment—Removal—Salary. The public hospital district commission shall appoint a superintendent, who shall be appointed for an indefinite time and be removable at the will of the commission. Appointments and removals shall be by resolution, introduced at a regular meeting and adopted at a subsequent regular meeting by a majority vote. He shall receive such salary as the commission shall fix by resolution. [1945 c 264 § 7; Rem. Supp. 1945 § 6090-36.]

70.44.080 Superintendent—Powers. The superintendent shall be the chief administrative officer of the public district hospital and shall have control of administrative functions of said hospital. He shall be responsible to the commission for the efficient administration of all affairs of the hospital. In case of the absence or temporary disability of the superintendent a competent person shall be appointed by the commission. The superintendent shall be entitled to attend all meetings of the commission and its committees and to take part in the discussion of any matters pertaining to the duties of his department, but shall have no vote. [1945 c 264 § 9; Rem. Supp. 1945 § 6090-38.]

70.44.090 Superintendent—Duties. The public hospital district superintendent shall have power, and it shall be his duty:

(1) To carry out the orders of the commission, and to see that all the laws of the state pertaining to matters within the functions of his department are duly enforced.

(2) To keep the commission fully advised as to the financial condition and needs of the district. To prepare, each year, an estimate for the ensuing fiscal year of the probable expenses of his department, and to recommend

to the commission what development work should be undertaken, and what extensions and additions, if any, should be made, during the ensuing fiscal year, with an estimate of the costs of such development work, extensions and additions. To certify to the commission all the bills, allowances and payrolls, including claims due contractors of public works. To recommend to the commission salaries of the employees of his office and a scale of salaries or wages to be paid for the different classes of service required by the district. [1945 c 264 § 11; Rem. Supp. 1945 § 6090-40.]

70.44.100 Inspection and approval of plans by state. The Washington state department of health shall be authorized to inspect all premises maintained or operated by any hospital district created hereunder. No district shall construct any building or make any alteration therein without first having obtained the approval of the Washington state board of health as to plans of such construction and the site thereof. [1945 c 264 § 8; Rem. Supp. 1945 § 6090-37.]

70.44.110 Plan to construct or improve—Submission to vote. Whenever the commission deems it advisable that the district acquire or construct a public hospital, or other health care facilities, or make additions or betterments thereto, or extensions thereof, it shall provide therefor by resolution, which shall specify and adopt the plan proposed, and declare the estimated cost thereof, and specify the amount of indebtedness, the amount of interest, and the time in which all bonds shall be paid, not to exceed thirty years. The incurring of such indebtedness shall be subject to the applicable limitations and requirements provided in section 1, chapter 143, Laws of 1917, as last amended by section 4, chapter 107, Laws of 1967, and RCW 39.36.020, as now or hereafter amended. If a proposition to incur any such indebtedness is to be submitted to the electors of the district it may be submitted at any general election or a special election called for that purpose pursuant to the applicable election laws. [1974 ex.s. c 165 § 3; 1969 ex.s. c 65 § 2; 1955 c 56 § 1; 1945 c 264 § 12; Rem. Supp. 1945 § 6090-41.]

70.44.120 Bonds—Form—Terms—Execution. All bonds shall be serial in form and maturity and numbered from one upwards consecutively. The various annual maturities shall commence not later than the tenth year after the date of issue of such bonds. The resolution authorizing the issuance of the bonds shall fix the rate of interest the bonds shall bear and the place and dates of the payment of both principal and interest. The bonds shall be signed by the president of the commission, attested by the secretary of the commission, and the seal of the public hospital district shall be affixed to each bond but not to the coupons: *Provided, however*, That said coupons, in lieu of being so signed, may have printed thereon a facsimile of the signatures of such officers. [1970 ex.s. c 56 § 86; 1969 ex.s. c 65 § 3; 1945 c 264 § 13; Rem. Supp. 1945 § 6090-42.]

Purpose—1970 ex.s. c 56: See note following RCW 39.44.030.

70.44.130 Bonds—Payment—Security for deposits. The principal and interest of such general bonds shall be paid by levying each year a tax upon the taxable property within the district sufficient, together with other revenues of the district available for such purpose, to pay said interest and principal of said bonds, which tax shall be due and collectible as any other tax. Said bonds shall be sold in such manner as the commission shall deem for the best interests of the district. All bonds and warrants issued under the authority of this chapter shall be legal securities, which may be used by any bank or trust company for deposit with the state treasurer, or any county or city treasurer, as security for deposits, in lieu of a surety bond, under any law relating to deposits of public moneys. [1971 ex.s. c 218 § 3; 1945 c 264 § 14; Rem. Supp. 1945 § 6090-43.]

70.44.140 Contracts for material and work—Call for bids. All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars, shall be by contract. Before awarding any such contract, the commission shall cause to be published a notice at least thirty days before the letting of said contract, inviting sealed proposals for such work, plans and specifications which must at the time of the publication of such notice be on file at the office of the public hospital district, subject to public inspection: *Provided, however,* That the commission may at the same time, and as part of the same notice, invite tenders for said work or materials upon plans and specifications to be submitted by bidders. Such notice shall state generally the work to be done, and shall call for proposals for doing the same, to be sealed and filed with the commission on or before the day and hour named therein. Each bid shall be accompanied by bid proposal security in the form of a certified check, cashier's check, postal money order, or surety bond made payable to the order of the commission, for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal security. At the time and place named, such bids shall be publicly opened and read, and the commission shall proceed to canvass the bids, and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his own plans and specifications: *Provided, however,* That no contract shall be let in excess of the estimated cost of said materials or work, or if, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all bid proposal security shall be returned to the bidders; but if such contract be let, then and in such case all bid proposal security shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials for doing such work, and a bond to perform such work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of contract price in any case, between the bidder and commission, in accordance with the bid. If such bidder fails to enter into said contract in accordance with said bid and furnish such bond within ten days from the date at

which he is notified that he is the successful bidder, the said bid proposal security and the amount thereof shall be forfeited to the public hospital district. [1965 c 83 § 1; 1945 c 264 § 17; Rem. Supp. 1945 § 6090-46.]

Contractor's bond: Chapter 39.08 RCW.

Lien on public works, retained percentage of contractor's earnings: Chapter 60.28 RCW.

70.44.150 Minimum wage scale on construction. Every contractor and subcontractor performing any work for said public hospital districts within said public hospital district shall pay or cause to be paid to its employees on such work or under such contract or subcontract not less than the minimum scale fixed by the resolution of the commission prior to the notice and call for bids on such work. The commission in fixing [the] scale of wages shall fix the same as nearly as possible to the current prevailing and going wages within the district for work of like character. [1945 c 264 § 18; Rem. Supp. 1945 § 6090-47.]

Prevailing wages on public works: Chapter 39.12 RCW.

70.44.160 Medical management of patients—Hospital standards. The medical management of patients shall be subject to the approval of the medical staff. All hospitals operated by a district shall be operated in compliance with the standards set by the American Hospital Association. [1965 c 157 § 3; 1945 c 264 § 10; Rem. Supp. 1945 § 6090-39.]

70.44.171 Treasurer—Duties—Funds—Depositaries—Surety bonds, cost. The treasurer of the county in which a public hospital district is located shall be treasurer of the district, except that the commission by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the district. If the treasurer is not the county treasurer, the commission shall require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the district against loss. The premium on any such bond shall be paid by the district.

All district funds shall be paid to the treasurer and shall be disbursed by him only on warrants issued by an auditor appointed by the commission, upon orders or vouchers approved by it. The treasurer shall establish a public hospital district fund, into which shall be paid all district funds, and he shall maintain such special funds as may be created by the commission, into which he shall place all money as the commission may, by resolution, direct.

If the treasurer of the district is the treasurer of the county all district funds shall be deposited with the county depositaries under the same restrictions, contracts, and security as provided for county depositaries. If the treasurer of the district is some other person, all funds shall be deposited in such bank or banks authorized to do business in this state as the commission by resolution shall designate, and with surety bond to the district or securities in lieu thereof of the kind, no less in amount, as provided in RCW 36.48.020 for deposit of

county funds. Such surety bond or securities in lieu thereof shall be filed or deposited with the treasurer of the district, and approved by resolution of the commission.

All interest collected on district funds shall belong to the district and be deposited to its credit in the proper district funds.

A district may provide and require a reasonable bond of any other person handling moneys or securities of the district. The district may pay the premium on such bond. [1967 c 227 § 1.]

70.44.185 Change of district boundary lines to allow farm units to be wholly within one hospital district—Notice. Notwithstanding any other provision of law, including RCW 70.44.040, whenever the boundary line between contiguous hospital districts bisects an irrigation block unit placing part of the unit in one hospital district and the balance thereof in another such district, the county auditor, upon his approval of a request therefor after public hearing thereon, shall change the hospital district boundary lines so that the entire farm unit of the person so requesting shall be wholly in one of such hospital districts and give notice thereof to those hospital district and county officials as he shall deem appropriate therefor. [1971 ex.s. c 218 § 4.]

70.44.190 Consolidation of districts. Two or more contiguous hospital districts, whether the territory therein lies in one or more counties, may consolidate by following the procedure outlined in chapter 35.10 RCW with reference to consolidation of cities and towns. [1953 c 267 § 3.]

70.44.200 Annexation of territory. A hospital district may annex territory outside the existing boundaries of such district and contiguous thereto, whether the territory therein lies in one or more counties, under the procedure applicable to annexation of unincorporated areas as provided in chapter 35.12 RCW. [1953 c 267 § 4.]

70.44.210 Alternate method of annexation—Contents of resolution calling for election. As an alternate method of annexation to public hospital districts, any territory adjacent to a public hospital district may be annexed thereto by vote of the qualified electors residing in the territory to be annexed, in the manner provided in RCW 70.44.210 through 70.44.230. An election to annex such territory may be called pursuant to a resolution calling for such an election adopted by the district commissioners.

Any resolution calling for such an election shall describe the boundaries of the territory to be annexed, state that the annexation of such territory to the public hospital district will be conducive to the welfare and benefit of the persons or property within the district and within the territory proposed to be annexed, and fix the date, time and place for a public hearing thereon which date shall be not more than sixty nor less than forty days following the adoption of such resolution. [1967 c 227 § 6.]

70.44.220 Alternate method of annexation—Publication and contents of notice of hearing—Hearing—Resolution—Special election. Notice of such hearing shall be published once a week for at least two consecutive weeks in one or more newspapers of general circulation within the territory proposed to be annexed. The notice shall contain a description of the boundaries of the territory proposed to be annexed and shall state the time and place of the hearing thereon and the fact that any changes in the boundaries of such territory will be considered at such time and place. At such hearing or any continuation thereof, any interested person may appear and be heard on all matters relating to the proposed annexation. The district commissioners may make such changes in the boundaries of the territory proposed to be annexed as it shall deem reasonable and proper, but may not delete any portion of the proposed area which will create an island of included or excluded lands. If the district commissioners shall determine that any additional territory should be included in the territory to be annexed, a second hearing shall be held and notice given in the same manner as for the original hearing. The district commissioners may adjourn the hearing on the proposed annexation from time to time not exceeding thirty days in all. At the next regular meeting following the conclusion of such hearing, the district commissioners shall, if it finds that the annexation of such territory will be conducive to the welfare and benefit of the persons and property therein and the welfare and benefit of the persons and property within the public hospital district, adopt a resolution fixing the boundaries of the territory to be annexed and causing to be called a special election on such annexation to be held not more than one hundred twenty days nor less than sixty days following the adoption of such resolution. [1967 c 227 § 7.]

70.44.230 Alternate method of annexation—Conduct and canvass of election—Notice—Ballot. An election on the annexation of territory to a public hospital district shall be conducted and canvassed in the same manner as provided for the conduct of an election on the formation of a public hospital district except that notice of such election shall be published in one or more newspapers of general circulation in the territory proposed to be annexed and the ballot proposition shall be in substantially the following form:

ANNEXATION TO (herein insert name of public hospital district)

"Shall the territory described in a resolution of the public hospital district commissioners of (here insert name of public hospital district) adopted on _____, _____, 19___, be annexed to such district?

YES
NO

If a majority of those voting on such proposition vote in favor thereof, the territory shall thereupon be annexed to the public hospital district. [1967 c 227 § 8.]

70.44.240 Contracting or joining with other districts, hospitals, corporations or individuals to jointly provide services or facilities. Any public hospital district may contract or join with any other public hospital district, any publicly owned hospital, any nonprofit hospital, any corporation, or individual to provide such individuals, hospital districts, and hospitals with services or facilities to be used by such individuals, districts, and hospitals, including the providing of health maintenance services. [1974 ex.s. c 165 § 4; 1967 c 227 § 3.]

70.44.250 Lease of real or personal property—Conditions of lease—Performance bond—Surety. A public hospital district may lease out real or personal property which it owns or in which it has an interest and which is not immediately necessary for its purposes upon such terms as the board of hospital commissioners deem proper.

No such lease shall be for a period longer than twenty-five years, and each lease of real property shall be secured by a bond conditioned to perform the terms of such lease with surety satisfactory to the commissioners, in a penalty not less than the rental for one-sixth of the term, but in any event not less than the rental for one year. In a lease, the term of which exceeds five years, and when at the option of the commissioners, it is so stipulated in the lease, the commission shall accept, with surety satisfactory to it, a bond conditioned to perform the terms of the lease for some part of the term, in no event less than five years (unless the remainder of the unexpired term is less than five years, in which case for the full remainder) and in every such case the commissioners shall require of the lessee, another or other like bond to be delivered within two years, and not less than one year prior to the expiration of the period covered by the existing bond covering an additional part of the term in accordance with the foregoing provisions in respect to the original bond, and so on until the end of the term so that there will always be in force a bond securing the performance of the lease, and the penalty in each bond shall be not less than the rental for one-half the period covered thereby, but no bond shall be construed to secure the furnishing of any other bond.

The commissioners may accept as surety on any bond required by this section, either an approved surety company or one or more persons satisfactory to the commissioners, or in lieu of such bond may accept a deposit as security of such property or collateral or the giving of such other form of security as may be satisfactory to the commissioners. [1967 c 227 § 4.]

70.44.260 Contracts for purchase of real or personal property. Any public hospital district may execute an executory conditional sales contract with any other municipal corporation, the state, or any of its political subdivisions, the government of the United States, or any private party for the purchase of any real or personal property, or property rights, in connection with the exercise of any powers or duties which such districts now or hereafter are authorized to exercise, if the entire amount of the purchase price specified in such contract does not result in a total indebtedness in excess of the

limitation imposed by RCW 39.36.020, as now or hereafter amended, to be incurred without the assent of the voters of the district: *Provided*, That if such a proposed contract would result in a total indebtedness in excess of three-fourths of one percent of the value of taxable property in such public hospital district, a proposition in regard to whether or not such a contract may be executed shall be submitted to the voters for approval or rejection in the same manner that bond issues for capital purposes are submitted to the voters. The term "value of taxable property" shall have the meaning set forth in RCW 39.36.015. [1975-'76 2nd ex.s. c 78 § 1.]

70.44.900 Severability—Construction—1945 c 264. Adjudication of invalidity of any section, clause or part of a section of this act [1945 c 264] shall not impair or otherwise affect the validity of the act as a whole or any other part thereof. The rule of strict construction shall have no application to this act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this act is intended. When this act comes in conflict with any provisions, limitation or restriction in any other law, this act shall govern and control. [1945 c 264 § 21; no RRS.]

70.44.901 Severability—Construction—1974 ex.s. c 165. If any section, clause, or other provision of this 1974 amendatory act, or its application to any person or circumstance, is held invalid, the remainder of such 1974 amendatory act, or the application of such section, clause, or provision to other persons or circumstances, shall not be affected. The rule of strict construction shall have no application to this 1974 amendatory act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this 1974 amendatory act is intended. When this 1974 amendatory act comes in conflict with any provision, limitation, or restriction in any other law, this 1974 amendatory act shall govern and control. [1974 ex.s. c 165 § 6.]

70.44.910 Construction—1945 c 264. This act [1945 c 264 § 22] shall not be deemed or construed to repeal or affect any existing act, or any part thereof, relating to the construction, operation and maintenance of public hospitals, but shall be supplemental thereto and concurrent therewith. [1945 c 264 § 22; no RRS.]

Chapter 70.46 HEALTH DISTRICTS

Sections	
70.46.020	Districts of two or more counties—Health board—Membership—Chairman.
70.46.030	Districts of one county—Board of health—Membership—Chairman.
70.46.040	Inclusion of a city over 100,000 population.
70.46.050	Representation on the district health board.
70.46.060	District health board—Powers and duties.
70.46.080	Treasurer—District funds—Contributions by counties and cities.
70.46.085	Expenses of providing public health services—Payment by counties and cities—Procedure on failure to pay.
70.46.090	Withdrawal of county or city.

- 70.46.100 Power to acquire, maintain, or dispose of property—
Contracts.
- 70.46.110 Disincorporation of district located in class A or AA
county and inactive for five years.
- 70.46.120 License or permit fees.
- 70.46.130 Contracts for sale or purchase of health services
authorized.

Local health departments, provisions relating to health districts: Chapter 70.05 RCW.

70.46.020 Districts of two or more counties—Health board—Membership—Chairman. Health districts consisting of two or more counties may be created whenever two or more boards of county commissioners shall by resolution establish a district for such purpose. Such a district shall consist of all the area of the combined counties including all cities and towns except cities of over one hundred thousand population. The district board of health of such a district shall consist of not less than seven members, including two representatives from each county who are members of the board of county commissioners and who are appointed by the board of county commissioners of each county within the district. The remaining members shall be representatives of the cities and towns in the district selected by mutual agreement of the legislative bodies of the cities and towns concerned from their membership, taking into consideration the financial contribution of such cities and towns and representation from the several classifications of cities and towns.

At the first meeting of a district board of health the members shall elect a chairman to serve for a period of one year. [1967 ex.s. c 51 § 6; 1945 c 183 § 2; Rem. Supp. 1945 § 6099-11.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.030 Districts of one county—Board of health—Membership—Chairman. A health district to consist of one county only and including all cities and towns therein except cities having a population of over one hundred thousand may be created whenever the board of county commissioners of the county shall pass a resolution to organize such a health district under chapter 70.05 RCW and RCW 70.46.020 through 70.46.090. The district board of health of such district shall consist of not less than five members, including the three members of the board of county commissioners of the county: *Provided*, That if such health district consists of a county of the second class, the district board of health shall consist of not less than six members, including the three members of the board of county commissioners of the county and one person who is a qualified voter of an unincorporated rural area of the county and who is appointed by the legislative authority of the county. The remaining members shall be representatives of the cities and towns in the district selected by mutual agreement of the legislative bodies of the cities and towns concerned from their membership, taking into consideration the respective populations and financial contributions of such cities and towns.

At the first meeting of a district board of health, the members shall elect a chairman to serve for a period of

one year. [1969 ex.s. c 70 § 1; 1967 ex.s. c 51 § 5; 1945 c 183 § 3; Rem. Supp. 1945 § 6099-12.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.040 Inclusion of a city over 100,000 population. Whenever a city of over one hundred thousand population desires to be included in a health district and shall through its legislative authority petition the district board of health to be included and the district board of health and the city legislative authority agree as to the functions to be performed for the city by the health district and the amount of financial contributions to be made by the city to the health district such city shall be included in the health district. [1967 ex.s. c 51 § 7; 1945 c 183 § 4; Rem. Supp. 1945 § 6099-13.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.050 Representation on the district health board. Whenever a city of over one hundred thousand population is included in a health district it shall have equal representation with the board of county commissioners of the county in which said city is located, the city's representatives to be selected by the legislative body of the city from among its membership. All appointments to the district board of health shall be made within thirty days after the formation of the district. Vacancies on the district board of health shall be filled by appointment within thirty days and made in the same manner as was the original appointment. Representatives on the district board of the various units of the district shall continue at the pleasure of the legislative body of the unit: *Provided*, That the representation on the local boards of health in existence at the time of the enactment of chapter 70.05 RCW and RCW 70.46-.020 through 70.46.090 may be continued without change in the discretion of the board. [1967 ex.s. c 51 § 8; 1957 c 100 § 1; 1945 c 183 § 5; Rem. Supp. 1945 § 6099-14.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.060 District health board—Powers and duties. The district board of health shall constitute the local board of health for all the territory included in the health district, and shall supersede and exercise all the powers and perform all the duties by law vested in the county or city or town board of health of any county, city or town included in the health district, except as otherwise in chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 provided. [1967 ex.s. c 51 § 11; 1945 c 183 § 6; Rem. Supp. 1945 § 6099-15.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.080 Treasurer—District funds—Contributions by counties and cities. Each health district shall establish a fund to be designated as the "district health fund", in which shall be placed all sums received by the district from any source, and out of which shall be expended all sums disbursed by the district. The county treasurer of the county in the district embracing only one county; or, in a district composed of more than one county the county treasurer of the county having the

largest population shall be the custodian of the fund, and the county auditor of said county shall keep the record of the receipts and disbursements, and shall draw and the county treasurer shall honor and pay all warrants, which shall be approved before issuance and payment as directed by the board: *Provided*, That in local health departments wherein a city of over one hundred thousand population is a part of said department, the local board of health may pool the funds available for public health purposes in the office of the city treasurer in a special pooling fund to be established and which shall be expended as set forth above.

Each county, city or town which is included in the district shall contribute such sums towards the expense for maintaining and operating the district as shall be agreed upon between it and the local board of health in accordance with guidelines established by the state board of health after consultation with the Washington state association of counties and the association of Washington cities. In the event that no agreement can be reached between the district board of health and the county, city or town, the matter shall be resolved by a board of arbitrators to consist of a representative of the district board of health, a representative from the county, city or town involved, and a third representative to be appointed by the two representatives, but if they are unable to agree, a representative shall be appointed by a judge in the county in which the city or town is located. The determination of the proportionate share to be paid by a county, city or town shall be binding on all parties. Payments into the fund of the district may be made by the county or city or town members during the first year of membership in said district from any funds of the respective county, city or town as would otherwise be available for expenditures for health facilities and services, and thereafter the members shall include items in their respective budgets for payments to finance the health district. [1971 ex.s. c 85 § 10; 1967 ex.s. c 51 § 19; 1945 c 183 § 8; Rem. Supp. 1945 § 6099-17.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.085 Expenses of providing public health services—Payment by counties and cities—Procedure on failure to pay. The expense of providing public health services shall be borne by each county, city or town within the health district, and the local health officer shall certify the amount agreed upon or as determined pursuant to RCW 70.46.080, and remaining unpaid by each county, city or town to the fiscal or warrant issuing officer of such county, city or town.

If the expense as certified is not paid by any county, city or town within thirty days after the end of the fiscal year, the local health officer shall certify the amount due to the auditor of the county in which the governmental unit is situated who shall promptly issue his warrant on the county treasurer payable out of the current expense fund of the county, which fund shall be reimbursed by the county auditor out of the money due said governmental unit at the next monthly settlement or settlements of the collection of taxes and shall be transferred to the current expense fund. [1967 ex.s. c 51 § 20.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.
Expenses of enforcing health laws and regulations: RCW 70.05.130.

70.46.090 Withdrawal of county or city. Any county or any city or town may withdraw from membership in said health district any time after it has been within the district for a period of two years, but no withdrawal shall be effective except at the end of the calendar year in which the county, city or town gives at least six months' notice of its intention to withdraw at the end of the calendar year. No withdrawal shall entitle any member to a refund of any moneys paid to the district nor relieve it of any obligations to pay to the district all sums for which it obligated itself due and owing by it to the district for the year at the end of which the withdrawal is to be effective: *Provided*, That any county, city or town which withdraws from membership in said health district shall immediately establish a health department or provide health services which shall meet the standards for health services promulgated by the state board of health: *Provided further*, That no local health department shall be deemed to provide adequate public health services unless there is at least one full time professionally trained and qualified physician as set forth in RCW 70.05.050. [1967 ex.s. c 51 § 21; 1945 c 183 § 9; Rem. Supp. 1945 § 6099-18.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.100 Power to acquire, maintain, or dispose of property—Contracts. In addition to all other powers and duties, a health district shall have the power to own, construct, purchase, lease, add to, and maintain any real and personal property or property rights necessary for the conduct of the affairs of the district. A health district may sell, lease, convey or otherwise dispose of any district real or personal property no longer necessary for the conduct of the affairs of the district. A health district may enter into contracts to carry out the provisions of this section. [1957 c 100 § 2.]

70.46.110 Disincorporation of district located in class A or AA county and inactive for five years. See chapter 57.90 RCW.

70.46.120 License or permit fees. In addition to all other powers and duties, health districts shall have the power to charge fees in connection with the issuance or renewal of a license or permit required by law: *Provided*, That the fees charged shall not exceed the actual cost involved in issuing or renewing the license or permit: *Provided further*, That no fees shall be charged pursuant to this section within the corporate limits of any city or town which prior to the enactment of this section charged fees in connection with the issuance or renewal of a license or permit pursuant to city or town ordinance and where said city or town makes a direct contribution to said health district, unless such city or town expressly consents thereto. [1963 c 121 § 1.]

70.46.130 Contracts for sale or purchase of health services authorized. See RCW 70.05.150.

**Chapter 70.50
STATE OTOLOGIST**

Sections

- 70.50.010 Appointment—Salary.
70.50.020 Duties.

Hearing tests for public school children: RCW 28A.31.030.

70.50.010 Appointment—Salary. The state director of health shall appoint and employ an otologist skilled in diagnosis of diseases of the ear and defects in hearing, especially for school children with an impaired sense of hearing, and shall fix the salary of such otologist in a sum not exceeding the salary of the director. [1945 c 23 § 1; Rem. Supp. 1945 § 6010–10.]

70.50.020 Duties. The otologist shall cooperate with the state department of public instruction, and with the state, county and city health officers, seeking for the children in the schools who are hard of hearing, or have an impaired sense of hearing, and making otological inspections and examinations of children referred to him by such departments and officers. Where necessary or proper he shall make recommendations to parents or guardians of such children, and urge them to submit such recommendations to physicians to be selected by such parents or guardians. [1945 c 23 § 2; Rem. Supp. 1945 § 6010–11.]

**Chapter 70.54
MISCELLANEOUS HEALTH AND SAFETY
PROVISIONS**

Sections

- 70.54.010 Polluting water supply—Penalty.
70.54.020 Furnishing impure water—Penalty.
70.54.030 Pollution of watershed of city in adjoining state—Penalty.
70.54.040 State director to advise local authorities on sanitation.
70.54.050 Exposing contagious disease—Penalty.
70.54.060 Ambulances and drivers.
70.54.065 Ambulances and drivers—Penalty.
70.54.070 Door of public buildings to swing outward—Penalty.
70.54.080 Liability of person handling steamboat or steam boiler.
70.54.090 Attachment of objects to utility poles.
70.54.100 Penalty for violation of RCW 70.54.090.
70.54.110 New housing for agricultural workers to comply with board of health regulations.
70.54.120 Immunity from implied warranties and civil liability relating to blood, plasma, and blood derivatives—Scope—Effective date.

*Control of cities and towns over water pollution: Chapter 35.88 RCW.
Nuisances, generally: Chapters 7.48 and 9.66 RCW.
Water pollution control: Chapter 90.48 RCW.*

70.54.010 Polluting water supply—Penalty. Every person who shall deposit or suffer to be deposited in any spring, well, stream, river or lake, the water of which is or may be used for drinking purposes, or on any property owned, leased or otherwise controlled by any municipal corporation, corporation or person as a watershed or drainage basin for a public or private water system, any matter or thing whatever, dangerous or deleterious to health, or any matter or thing which may or could pollute the waters of such spring, well, stream, river, lake or water system, shall be guilty of a gross misdemeanor. [1909 c 249 § 290; RRS § 2542.]

70.54.020 Furnishing impure water—Penalty. Every owner, agent, manager, operator or other person having charge of any waterworks furnishing water for public or private use, who shall knowingly permit any act or omit any duty or precaution by reason whereof the purity or healthfulness of the water supplied shall become impaired, shall be guilty of a gross misdemeanor. [1909 c 249 § 291; RRS § 2543.]

70.54.030 Pollution of watershed of city in adjoining state—Penalty. Any person who shall place or cause to be placed within any watershed from which any city or municipal corporation of any adjoining state obtains its water supply, any substance which either by itself or in connection with other matter will corrupt, pollute or impair the quality of said water supply, or the owner of any dead animal who shall knowingly leave or cause to be left the carcass or any portion thereof within any such watershed in such condition as to in any way corrupt or pollute such water supply shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine in any sum not exceeding five hundred dollars. [1909 c 16 § 2; RRS § 9281.]

70.54.040 State director to advise local authorities on sanitation. The commissioners of any county or the mayor of any city may call upon the state commissioner of health for advice relative to improving sanitary conditions or disposing of garbage and sewage or obtaining a pure water supply, and when so called upon the state commissioner of health shall either personally or by an assistant make a careful examination into the conditions existing and shall make a full report containing his advice thereon to the county or city making such request. [1909 c 208 § 3; RRS § 6006.]

70.54.050 Exposing contagious disease—Penalty. Every person who shall wilfully expose himself to another, or any animal affected with any contagious or infectious disease, in any public place or thoroughfare, except upon his or its necessary removal in a manner not dangerous to the public health; and every person so affected who shall expose any other person thereto without his knowledge, shall be guilty of a misdemeanor. [1909 c 249 § 287; RRS § 2539.]

70.54.060 Ambulances and drivers. (1) The drivers of all ambulances shall be required to take the advanced first aid course as prescribed by the American Red Cross.

(2) All ambulances must be at all times equipped with first aid equipment consisting of leg and arm splints and standard twenty-four unit first aid kit as prescribed by the American Red Cross. [1945 c 65 § 1; Rem. Supp. 1945 § 6131–1. FORMER PART OF SECTION: 1945 c 65 § 2 now codified as RCW 70.54.060, part.]

70.54.065 Ambulances and drivers—Penalty. Any person violating any of the provisions herein shall be guilty of a misdemeanor. [1945 c 65 § 2; Rem. Supp. 1945 § 6131–2. Formerly RCW 70.54.060, part.]

70.54.070 Door of public buildings to swing outward—Penalty. The doors of all theatres, opera houses, school buildings, churches, public halls, or places used for public entertainments, exhibitions or meetings, which are used exclusively or in part for admission to or egress from the same, or any part thereof, shall be so hung and arranged as to open outwardly, and during any exhibition, entertainment or meeting, shall be kept unlocked and unfastened, and in such condition that in case of danger or necessity, immediate escape from such building shall not be prevented or delayed; and every agent or lessee of any such building who shall rent the same or allow it to be used for any of the aforesaid public purposes without having the doors thereof hung and arranged as hereinbefore provided, shall, for each violation of any provision of this section, be guilty of a misdemeanor. [1909 c 249 § 273; RRS § 2525.]

70.54.080 Liability of person handling steamboat or steam boiler. Every person who shall apply, or cause to be applied to a steam boiler a higher pressure of steam than is allowed by law, or by any inspector, officer or person authorized to limit the same; every captain or other person having charge of the machinery or boiler in a steamboat used for the conveyance of passengers on the waters of this state, who, from ignorance or gross neglect, or for the purpose of increasing the speed of such boat, shall create or cause to be created an undue or unsafe pressure of steam; and every engineer or other person having charge of a steam boiler, steam engine or other apparatus for generating or employing steam, who shall wilfully or from ignorance or gross neglect, create or allow to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or cause any other accident, whereby human life is endangered, shall be guilty of a gross misdemeanor. [1909 c 249 § 280; RRS § 2532.]

*Boilers and unfired pressure vessels: Chapter 70.79 RCW.
Division of safety: Chapter 43.22 RCW.*

70.54.090 Attachment of objects to utility poles. It shall be unlawful to attach to utility poles any of the following: Advertising signs, posters, vending machines, or any similar object which presents a hazard to, or endangers the lives of, electrical workers. Any attachment to utility poles shall only be made with the permission of the utility involved, and shall be placed not less than twelve feet above the surface of the ground. [1953 c 185 § 1.]

70.54.100 Penalty for violation of RCW 70.54.090. Every person violating the provisions of RCW 70.54.090 shall be guilty of a misdemeanor. [1953 c 185 § 2.]

70.54.110 New housing for agricultural workers to comply with board of health regulations. All new housing and new construction together with the land areas appurtenant thereto which shall be started on and after May 3, 1969, and is to be provided by employers, growers, management, or any other persons, for occupancy by workers or by workers and their dependents, in agriculture, shall comply with the rules and regulations of the

state board of health pertaining to labor camps, filed with the office of the code reviser on November 20, 1968 and future amendments and revisions thereof. [1969 ex.s. c 231 § 1.]

70.54.120 Immunity from implied warranties and civil liability relating to blood, plasma, and blood derivatives—Scope—Effective date. The procurement, processing, storage, distribution, administration, or use of whole blood, plasma, blood products and blood derivatives for the purpose of injecting or transfusing the same, or any of them, into the human body is declared to be, for all purposes whatsoever, the rendition of a service by each and every person, firm, or corporation participating therein, and is declared not to be covered by any implied warranty under the Uniform Commercial Code, Title 62A RCW, or otherwise, and no civil liability shall be incurred as a result of any of such acts, except in the case of wilful or negligent conduct: *Provided, however,* That this section shall apply only to liability alleged in the contraction of hepatitis and malaria and shall not apply to any transaction in which the blood donor receives compensation: *Provided further,* That this section shall only apply where the person, firm or corporation rendering the above service shall have maintained records of donor suitability and donor identification similar to those specified in sections 73.301 and 73.302(e) as now written or hereafter amended in Title 42, Public Health Service Regulations adopted pursuant to the Public Health Service Act, 42 U.S.C. 262: *Provided further,* That nothing in this section shall be considered by the courts in determining or applying the law to any blood transfusion occurring before June 10, 1971 and the court shall decide such case as though this section had not been passed. [1971 c 56 § 1.]

Severability—1971 c 56: "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." [1971 c 56 § 2.] This applies to RCW 70.54.120.

Chapter 70.58 VITAL STATISTICS

Sections	
70.58.010	Registration districts.
70.58.020	Local registrars—Deputies.
70.58.030	Duties of local registrars.
70.58.040	Compensation of local registrars.
70.58.050	Duty to enforce law.
70.58.070	Registration of births required.
70.58.080	Birth certificates—Unwed mothers.
70.58.095	New certificate of birth—Legitimation, paternity— Substitution for original—When delayed registration required.
70.58.100	Supplemental report on name of child.
70.58.110	Delayed registration of births—Authorized.
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70.58.130	Delayed registration of births—Where registered— Copy as evidence.
70.58.145	Order establishing record of birth when delayed registra- tion not available—Procedure.
70.58.150	"Fetal death", "evidence of life", defined.
70.58.160	Certificate of death or fetal death required.
70.58.170	Certificate of death or fetal death—By whom filed.

- 70.58.180 Certificate when no physician in attendance—Legally accepted cause of death.
- 70.58.190 Permit to dispose of body when cause of death undetermined.
- 70.58.200 Forms of birth, death, marriage, and decrees of divorce, annulment, or separate maintenance certificates—Contents—Confidentiality.
- 70.58.210 Birth certificate upon adoption.
- 70.58.230 Permits for burial, removal, etc., required—Removal to another district without permit, notice to registrar, fee.
- 70.58.240 Duties of funeral directors.
- 70.58.250 Burial—transit permit—Requisites.
- 70.58.260 Burial grounds—Duties of sexton.
- 70.58.270 Data on inmates of hospitals, etc.
- 70.58.280 Penalty.
- 70.58.290 Local registrar to furnish list of deceased voters.
- 70.58.300 Registry for handicapped children—Purpose.
- 70.58.310 Registry for handicapped children—To be established and maintained.
- 70.58.320 Registry for handicapped children—Reports by physician as to congenital defects or disabling conditions.
- 70.58.330 Registry for handicapped children—Reports of physicians confidential.
- 70.58.340 Registry for handicapped children—Cooperation with private or public organizations or agencies—Contributions.
- 70.58.350 Registry for handicapped children—Rules and regulations.

70.58.010 Registration districts. Each city of the first class shall constitute a primary registration district and each county and the territory of counties jointly comprising a health district, exclusive of the portion included within cities of the first class, served by full time health officers shall constitute a primary registration area. All other counties and municipal areas not included in the foregoing shall be divided into registration areas by the state registrar as he may deem essential to obtain the most efficient registration of vital events as provided by law. [1951 c 106 § 4; 1915 c 180 § 1; 1907 c 83 § 2; RRS § 6019.]

70.58.020 Local registrars—Deputies. Under the direction and control of the state registrar, the health officer of each city of the first class shall be the local registrar in and for the primary registration district under his supervision as health officer and the health officer of each county and district health department normally served by a full-time health officer shall be the local registrar in and for the registration area which he supervises as health officer and shall serve as such as long as he performs the registration duties as prescribed by law. He may be removed as local registrar of the registration area which he serves by the state board of health upon its finding of evidence of neglect in the performance of his duties as such registrar. The state registrar shall appoint local registrars for those registration areas not included in the foregoing and also in areas where the state board of health has removed the health officer from this position as registrar.

Each local registrar, subject to the approval of the state registrar, shall appoint in writing a sufficient number of deputy registrars to administer the laws relating to vital statistics, and shall certify the appointment of such deputies to the state registrar. Deputy registrars shall act in the case of absence, death, illness or disability of the local registrar, or such other conditions as may

be deemed sufficient cause to require their services. [1961 ex.s. c 5 § 5; 1951 c 106 § 5; 1915 c 180 § 2; 1907 c 83 § 3; RRS § 6020.]

Director of combined city-county health department as registrar: RCW 70.08.060.

70.58.030 Duties of local registrars. The local registrar shall supply blank forms of certificates to such persons as require them. He shall carefully examine each certificate of birth, death, and fetal death when presented for record, and see that it has been made out in accordance with the provisions of law and the instructions of the state registrar. If any certificate of death is incomplete or unsatisfactory, he shall call attention to the defects in the return, and withhold issuing the burial-transit permit until it is corrected. If the certificate of death is properly executed and complete, he shall issue a burial-transit permit to the funeral director or person acting as such. If a certificate of a birth is incomplete, he shall immediately notify the informant, and require him to supply the missing items if they can be obtained. He shall sign his name as local registrar to each certificate filed in attest of the date of filing in his office. He shall make a record of each birth, death, and fetal death certificate registered by him in such manner as directed by the state registrar. He shall on or before the tenth day of each month, transmit to the state registrar all original certificates registered by him during the preceding month. If no births or no deaths occurred in any month, he shall, on the tenth day of the following month, report that fact to the state registrar, on a card provided for this purpose: *Provided*, That in cities of the first class the city health officer may require the filing of two original certificates and may retain one of the duplicate original certificates as the city record. [1961 ex.s. c 5 § 6; 1907 c 83 § 18; RRS § 6035.]

70.58.040 Compensation of local registrars. A local registrar shall be paid the sum of one dollar for each birth, death, or fetal death certificate registered for his district which sum shall cover making out the burial-transit permit and record of the certificate to be filed and preserved in his office. If no births or deaths were registered during any month, the local registrar shall be paid the sum of one dollar for each report to that effect: *Provided*, That all local health officers who are by statute required to serve as local registrars shall not be entitled to the fee of one dollar. Neither shall any members of their staffs be entitled to the above fee of one dollar when such persons serve as deputy registrars. All fees payable to local registrars shall be paid by the treasurer of the county or city, properly chargeable therewith, out of the funds of the county or city, upon warrants drawn by the auditor, or other proper officer of the county or city. No warrant shall be issued to a local registrar except upon a statement, signed by the state registrar, stating the names and addresses respectively of the local registrars entitled to fees from the county or city, and the number of certificates and reports of births, deaths, and fetal deaths, properly returned to the state registrar, by each local registrar, during three preceding calendar months prior to the date of the statement, and the

amount of fees to which each local registrar is entitled, which statement the state registrar shall file with the proper officers during the months of January, April, July, and October of each year. Upon filing of the statement the auditor or other proper officer of the county or city shall issue warrants for the amount due each local registrar. [1961 ex.s. c 5 § 7; 1951 c 106 § 8; 1915 c 180 § 10; 1907 c 83 § 19; RRS § 6036.]

70.58.050 Duty to enforce law. The local registrars are hereby charged with the strict and thorough enforcement of the provisions of *this act in their districts, under the supervision and direction of the state registrar. And they shall make an immediate report to the state registrar of any violations of this law coming to their notice by observation or upon the complaint of any person, or otherwise. The state registrar is hereby charged with the thorough and efficient execution of the provisions of *this act in every part of the state, and with supervisory power over local registrars, to the end that all of the requirements shall be uniformly complied with. He shall have authority to investigate cases of irregularity or violation of law, personally or by accredited representative, and all local registrars shall aid him, upon request, in such investigation. When he shall deem it necessary he shall report cases of violation of any of the provisions of *this act to the prosecuting attorney of the proper county with a statement of the fact and circumstances; and when any such case is reported to them by the state registrar, all prosecuting attorneys or officials acting in such capacity shall forthwith initiate and promptly follow up the necessary court proceedings against the parties responsible for the alleged violations of law. And upon request of the state registrar the attorney general shall likewise assist in the enforcement of the provisions of *this act. [1907 c 83 § 22; RRS § 6039.]

***Reviser's note:** "this act" appears in 1907 c 83 codified as RCW 70.58.010 through 70.58.100, 70.58.230 through 70.58.280, and 43.20.070 through 43.20.090.

70.58.070 Registration of births required. All births that occur in the state shall be immediately registered in the districts in which they occur, as hereinafter provided. [1907 c 83 § 11; RRS § 6028.]

70.58.080 Birth certificates—Unwed mothers. The attending physician or midwife shall file a certificate of birth, properly and completely filled out, giving all of the particulars required, with the local registrar of the district in which the birth occurred, within ten days after the birth. If there is no attending physician or midwife, the father or mother of the child, householder or owner of the premises, manager or superintendent of the public or private institution in which the birth occurred, shall notify the local registrar, within ten days after the birth, of the fact of the birth, and the local registrar shall secure the necessary information and signature to make a proper certificate of birth.

When an infant is found for whom no certificate of birth is known to be on file, a birth certificate shall be

filed within the time and in the form prescribed by the state board of health.

When no putative father is named on a birth certificate of a child born to an unwed mother the mother may give any surname she so desires to her child but shall designate in space provided for father's name on the birth certificate "None Named". [1961 ex.s. c 5 § 8; 1951 c 106 § 6; 1907 c 83 § 12; RRS § 6029.]

70.58.095 New certificate of birth—Legitimation, paternity—Substitution for original—When delayed registration required. The state registrar of vital statistics shall establish a new certificate of birth for a person born in this state when he receives a request that a new certificate be established and such evidence as required by regulation of the state board of health proving that such person has been acknowledged, or that a court of competent jurisdiction has determined the paternity of such person. When a new certificate of birth is established, the actual place and date of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of paternity, or acknowledgment shall not be subject to inspection except upon order of a court of competent jurisdiction. If no certificate of birth is on file for the person for whom a new certificate is to be established under this section, a delayed registration of birth shall be filed with the state registrar of vital statistics as provided in RCW 70.58.120. [1975-'76 2nd ex.s. c 42 § 38; 1961 ex.s. c 5 § 21.]

Severability—Savings—Construction—1975-'76 2nd ex.s. c 42: RCW 26.26.900-26.26.905.

70.58.100 Supplemental report on name of child. It shall be the duty of every local registrar when any certificate of birth of a living child is presented without statement of the given name, to make out and deliver to the parents of such child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed and returned to the registrar as soon as the child has been named. [1915 c 180 § 8; 1907 c 83 § 14; RRS § 6031.]

70.58.110 Delayed registration of births—Authorized. Whenever a birth which occurred in this state on or after July 1, 1907, is not on record in the office of the state registrar or in the office of the auditor of the county in which the birth occurred if the birth was prior to July 1, 1907, application for the registration of the birth may be made by the interested person to the state registrar: *Provided*, That if the person whose birth is to be recorded be a child under four years of age the attending physician, if available, shall make the registration. [1953 c 90 § 2; 1943 c 176 § 1; 1941 c 167 § 1; Rem. Supp. 1943 § 6011-1.]

70.58.120 Delayed registration of births—Application—Evidence required. The delayed registration of birth form shall be provided by the state registrar and shall be signed by the registrant if of legal age, or by the attendant at birth, parent, or guardian if the registrant is not of legal age. In instances of delayed registration of

birth where the person whose birth is to be recorded is four years of age or over but under twelve years of age and in instances where the person whose birth is to be recorded is less than four years of age and the attending physician is not available to make the registration, the facts concerning date of birth, place of birth, and parentage shall be established by at least one piece of documentary evidence. In instances of delayed registration of birth where the person whose birth is to be recorded is twelve years of age or over, the facts concerning date of birth and place of birth shall be established by at least three documents of which only one may be an affidavit. The facts concerning parentage shall be established by at least one document. Documents, other than affidavits, or documents established prior to the fourth birthday of the registrant, shall be at least five years old or shall have been made from records established at least five years prior to the date of application. [1961 ex.s. c 5 § 9; 1953 c 90 § 3; 1943 c 176 § 2; 1941 c 167 § 2; Rem. Supp. 1943 § 6011-2.]

70.58.130 Delayed registration of births—Where registered—Copy as evidence. The birth shall be registered in the records of the state registrar. A certified copy of the record shall be prima facie evidence of the facts stated therein. [1961 ex.s. c 5 § 10; 1953 c 90 § 4; 1951 c 106 § 2; 1943 c 176 § 4; 1941 c 167 § 4; Rem. Supp. 1943 § 6011-4.]

70.58.145 Order establishing record of birth when delayed registration not available—Procedure. When a person alleged to be born in this state is unable to meet the requirements for a delayed registration of birth in accordance with RCW 70.58.120, he may petition the superior court of the county of residence or of the county of birth for an order establishing a record of the date and place of his birth, and his parentage. The court shall fix a time for hearing the petition, and the state registrar shall be given notice at least twenty days prior to the date set for hearing in order that he may present at the hearing any information he believes will be useful to the court. If the court from the evidence presented to it finds that the petitioner was born in this state, the court shall issue an order to establish a record of birth. This order shall include the birth data to be registered. If the court orders the birth of a person born in this state registered, it shall be registered in the records of the state registrar. [1961 ex.s. c 5 § 20.]

70.58.150 "Fetal death", "evidence of life", defined. A fetal death means any product of conception that shows no evidence of life after complete expulsion or extraction from its mother. The words "evidence of life" include breathing, beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. [1961 ex.s. c 5 § 11; 1945 c 159 § 5; Rem. Supp. 1945 § 6024-5.]

70.58.160 Certificate of death or fetal death required. A certificate of every death or fetal death shall be filed with the local registrar of the district in which the death or fetal death occurred within three days after the

occurrence is known, or if the place of death or fetal death is not known, then with the local registrar of the district in which the body is found within twenty-four hours thereafter. In every instance a certificate shall be filed prior to the interment or other disposition of the body: *Provided*, That a certificate of fetal death shall not be required if the period of gestation is less than twenty weeks. [1961 ex.s. c 5 § 12; 1945 c 159 § 1; Rem. Supp. 1945 § 6024-1. Prior: 1915 c 180 § 4; 1907 c 83 § 5.]

70.58.170 Certificate of death or fetal death—By whom filed. The funeral director or person in charge of interment shall file the certificate of death or fetal death. In preparing such certificate, the funeral director or person in charge of interment shall obtain and enter on the certificate such personal data as the certificate requires from the person or persons best qualified to supply them. He shall present the certificate of death to the physician last in attendance upon the deceased, or, if the deceased died without medical attendance, to the health officer, coroner, or prosecuting attorney having jurisdiction, who shall thereupon certify the cause of death according to his best knowledge and belief. He shall present the certificate of fetal death to the physician, midwife, or other person in attendance at the fetal death, who shall certify the fetal death and such medical data pertaining thereto as he can furnish. [1961 ex.s. c 5 § 13; 1945 c 159 § 2; Rem. Supp. 1945 § 6024-2.]

70.58.180 Certificate when no physician in attendance—Legally accepted cause of death. If the death occurred without medical attendance, the funeral director or person in charge of interment shall notify the coroner, or prosecuting attorney if there is no coroner in the county. If the circumstances suggest that the death or fetal death was caused by unlawful or unnatural causes or if there is no local health officer with jurisdiction, the coroner, or if none, the prosecuting attorney shall complete and sign the certification, noting upon the certificate that no physician was in attendance at the time of death. In case of any death without medical attendance in which there is no suspicion of death from unlawful or unnatural causes, the local health officer or his deputy, the coroner and if none, the prosecuting attorney, shall complete and sign the certification, noting upon the certificate that no physician was in attendance at the time of death, and noting the cause of death without the holding of an inquest or performing of an autopsy or post mortem, but from statements of relatives, persons in attendance during the last sickness, persons present at the time of death or other persons having adequate knowledge of the facts.

The cause of death, the manner and mode in which death occurred, as noted by the coroner or if none, the prosecuting attorney or the health officer and incorporated in the death certificate filed with the bureau of vital statistics of the board of health shall be the legally accepted manner and mode by which the deceased came to his or her death and shall be the legally accepted cause of death. [1961 ex.s. c 5 § 14; 1953 c 188 § 5; 1945 c 159 § 3; Rem. Supp. 1945 § 6024-3. Prior: 1915 c 180 § 5; 1907 c 83 § 7.]

70.58.190 Permit to dispose of body when cause of death undetermined. If the cause of death cannot be determined within three days, the certification of its cause may be filed after the prescribed period, but the attending physician, coroner, or prosecuting attorney shall give the local registrar of the district in which the death occurred written notice of the reason for the delay, in order that a permit for the disposition of the body may be issued if required. [1945 c 159 § 4; Rem. Supp. 1945 § 6024-4.]

70.58.200 Forms of birth, death, marriage, and decrees of divorce, annulment, or separate maintenance certificates—Contents—Confidentiality. The forms of birth, death, fetal death, marriage, and decrees of divorce, annulment, or separate maintenance certificates filed with the state registrar of vital statistics shall include the items required by the respective standard certificate as recommended by the federal agency responsible for national vital statistics which became effective on January 1, 1968, except that no information shall be required on the certificate of divorce relative to the date the couple separated or the number of children under eighteen years of age: *Provided*, That none of the information contained in the confidential section of the forms of marriage, divorce, annulment or separate maintenance shall be required: *Provided further*, That no information shall be required on the certificate of live birth relative to the education of the parents of the child. The Washington state board of health by regulation may require additional pertinent information relative to the birth and manner of delivery as it may deem necessary for statistical study. This information shall be placed in a confidential section of the birth certificate form and shall not be subject to the view of the public or for certification purposes except upon order of a court: *Provided*, That the state board of health may eliminate from the forms any such items that it determines are not necessary for statistical study. [1975-'76 2nd ex.s. c 42 § 39; 1969 ex.s. c 279 § 2; 1967 c 26 § 10; 1961 ex.s. c 5 § 15; 1945 c 159 § 6; Rem. Supp. 1945 § 6024-6. Prior: 1907 c 83 § 6.]

Severability—Savings—Construction—1975-'76 2nd ex.s. c 42: RCW 26.26.900-26.26.905.

70.58.210 Birth certificate upon adoption. Whenever a decree of adoption has been entered declaring a child, born in the state of Washington, adopted in any court of competent jurisdiction in the state of Washington or any other state, a certified copy of the decree of adoption shall be recorded with the proper department of registration of births in the state of Washington and a certificate of birth shall issue upon request, bearing the new name of the child as shown in the decree of adoption, the names of the foster parents of the said child, age, sex, date of birth, but no reference in any birth certificate shall have reference to the adoption of the said child. However, original registration of births shall remain a part of the record of the said board of health. [1975-'76 2nd ex.s. c 42 § 40; 1943 c 12 § 1; 1939 c 133 § 1; Rem. Supp. 1943 § 6013-1.]

Severability—Savings—Construction—1975-'76 2nd ex.s. c 42: RCW 26.26.900-26.26.905.

Adoption: Chapter 26.32 RCW.

Uniform parentage act: Chapter 26.26 RCW.

70.58.230 Permits for burial, removal, etc., required—Removal to another district without permit, notice to registrar, fee. It shall be unlawful for any person to inter, deposit in a vault, grave, or tomb, cremate or otherwise dispose of, or disinter or remove from one registration district to another, or hold for more than seventy-two hours after death, the body or remains of any person whose death occurred in this state or any body which shall be found in this state, without obtaining, from the local registrar of the district in which the death occurred or in which the body was found, a permit for the burial, disinterment, or removal of such body: *Provided*, That a licensed funeral director or embalmer of this state may remove a body from the district where the death occurred to another registration district without having obtained a permit but in such cases the funeral director or embalmer shall at the time of removing a body file with or mail to the local registrar of the district where the death occurred a notice of removal upon a blank to be furnished by the state registrar. The notice of removal shall be signed by the funeral director or embalmer and shall contain the name and address of the local registrar with whom the certificate of death will be filed and the burial-transit permit secured. Every local registrar, accepting a death certificate and issuing a burial-transit permit for a death that occurred outside his district, shall be entitled to a fee of one dollar to be paid by the funeral director or embalmer at the time the death certificate is accepted and the permit is secured. It shall be unlawful for any person to bring into or transport within the state or inter, deposit in a vault, grave, or tomb, or cremate or otherwise dispose of the body or remains of any person whose death occurred outside this state unless such body or remains be accompanied by a removal or transit permit issued in accordance with the law and health regulations in force where the death occurred, or unless a special permit for bringing such body into this state shall be obtained from the state registrar. [1961 ex.s. c 5 § 16; 1915 c 180 § 3; 1907 c 83 § 4; RRS § 6021.]

70.58.240 Duties of funeral directors. Each funeral director or person acting as such shall obtain a certificate of death and file the same with the local registrar, and secure a burial-transit permit, prior to any permanent disposition of the body. He shall obtain the personal and statistical particulars required, from the person best qualified to supply them. He shall present the certificate to the attending physician or in case the death occurred without any medical attendance, to the proper official for certification for the medical certificate of the cause of death and other particulars necessary to complete the record. He shall supply the information required relative to the date and place of disposition and he shall present the completed certificate to the local registrar, for the issuance of a burial-transit permit. He shall deliver the burial permit to the sexton, or person in charge of the place of burial, before interring the body;

or shall attach the transit permit to the box containing the corpse, when shipped by any transportation company, and the permit shall accompany the corpse to its destination. [1961 ex.s. c 5 § 17; 1915 c 180 § 6; 1907 c 83 § 8; RRS § 6025.]

70.58.250 Burial-transit permit—Requisites. The burial-transit permit shall contain a statement by the local registrar and over his signature, that a satisfactory certificate of death having been filed with him, as required by law, permission is granted to inter, remove, or otherwise dispose of the body; stating the name of the deceased and other necessary details upon the form prescribed by the state registrar. [1961 ex.s. c 5 § 18; 1907 c 83 § 9; RRS § 6026.]

70.58.260 Burial grounds—Duties of sexton. It shall be unlawful for any person in charge of any premises in which bodies of deceased persons are interred, cremated or otherwise permanently disposed of, to permit the interment, cremation or other disposition of any body upon such premises unless it is accompanied by a burial, removal or transit permit as hereinabove provided. It shall be the duty of the person in charge of any such premises to, in case of the interment, cremation or other disposition of a body therein, endorse upon the permit the date and character of such disposition, over his signature, to return all permits so endorsed to the local registrar of his district within ten days from the date of such disposition, and to keep a record of all bodies disposed of on the premises under his charge, stating, in each case, the name of the deceased person, if known, the place of death, the date of burial or other disposition, and the name and address of the undertaker, which record shall at all times be open to public inspection, and it shall be the duty of every undertaker, or person acting as such, when burying a body in a cemetery or burial grounds having no person in charge, to sign the burial, removal or transit permit, giving the date of burial, write across the face of the permit the words "no person in charge", and file the burial, removal or transit permit within ten days with the registrar of the district in which the cemetery is located. [1915 c 180 § 7; 1907 c 83 § 10; RRS § 6027.]

70.58.270 Data on inmates of hospitals, etc. All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of disease, confinement, or are committed by process of law, are hereby required to make a record of all the personal and statistical particulars relative to the inmates in their institutions, at the date of approval of *this act, that are required in the form of the certificate provided for by this act, as directed by the state registrar; and thereafter such record shall be by them made for all future inmates at the time of their admission. And in case of persons admitted or committed for medical treatment of contagious disease, the physician in charge shall specify, for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information

required by this section shall be obtained from the individual himself, if it is practicable to do so; and when they cannot be so obtained, they shall be secured in as complete a manner as possible from the relatives, friends, or other persons acquainted with the facts. [1907 c 83 § 16; RRS § 6033.]

*Reviser's note: "this act", see note following RCW 70.58.050.

70.58.280 Penalty. Every person who shall violate or wilfully fail, neglect or refuse to comply with any provisions of *this act shall be guilty of a misdemeanor and for a second offense shall be punished by a fine of not less than twenty-five dollars, and for a third and each subsequent offense shall be punished by a fine of not less than fifty dollars or more than two hundred and fifty dollars or by imprisonment for not more than ninety days, or by both fine and imprisonment, and every person who shall wilfully furnish any false information for any certificate required by *this act or who shall make any false statement in any such certificate shall be guilty of a gross misdemeanor. [1915 c 180 § 12; 1907 c 83 § 21; RRS § 6038.]

*Reviser's note: "this act", see note following RCW 70.58.050.

70.58.290 Local registrar to furnish list of deceased voters. See RCW 29.10.095.

70.58.300 Registry for handicapped children—Purpose. The purpose of this enactment is to provide a registry for handicapped children as an aid to their timely treatment and care. [1959 c 177 § 1.]

70.58.310 Registry for handicapped children—To be established and maintained. The director of the department of health, through the state registrar of vital statistics, shall establish and maintain a registry for handicapped children. [1959 c 177 § 2.]

70.58.320 Registry for handicapped children—Reports by physician as to congenital defects or disabling conditions. Whenever the attending physician discovers that a newborn child has a congenital defect, and whenever a physician discovers upon treating a child under the age of fourteen years that such child has a partial or complete disability or a condition which may lead to partial or complete disability, such fact shall be reported to the local registrar upon a form to be provided by the director of health. No report shall be required if the disabling condition has been previously reported or the condition is not one required to be reported by the director of health. Congenital defects shall be reported at the same time as birth certificates are required to be filed. Each physician shall make a report as to disabling conditions within thirty days after discovery thereof.

The forms to be provided by the director of health for this purpose shall require such information as the director deems necessary to carry out the purpose of RCW 70.58.300 through 70.58.350. [1959 c 177 § 3.]

70.58.330 Registry for handicapped children—Reports of physicians confidential. Except compilations of statistical data furnished by the department, the

information furnished in the reports required by RCW 70.58.320 shall be secret and shall not be revealed except upon order of the superior court. [1959 c 177 § 4.]

70.58.340 Registry for handicapped children—Cooperation with private or public organizations or agencies—Contributions. The director of health and any local health officer is authorized to cooperate with and to promote the aid of any medical, health, nursing, welfare, or other private groups or organizations, and with any state agency or political subdivision to furnish statistical data in furtherance of the purpose of RCW 70.58.300 through 70.58.350. The director or any local health officer may accept contributions or gifts in cash or otherwise from any person, group, or governmental agency to further the purpose of RCW 70.58.300 through 70.58.350. [1959 c 177 § 5.]

70.58.350 Registry for handicapped children—Rules and regulations. The state board of health is authorized to make such rules and regulations as are necessary to carry out the purpose of RCW 70.58.300 through 70.58.350. [1959 c 177 § 6.]

**Chapter 70.62
TRANSIENT ACCOMMODATIONS—
LICENSING—INSPECTIONS**

Sections

- 70.62.200 Purpose.
- 70.62.210 Definitions.
- 70.62.220 License required—Fee—Display.
- 70.62.230 Inspection fee.
- 70.62.240 Rules and regulations.
- 70.62.250 Powers and duties of department.
- 70.62.260 Licenses—Applications—Expiration—Renewal.
- 70.62.270 Suspension or revocation of licenses.
- 70.62.280 Violations—Penalty.
- 70.62.290 Fire and safety rules and regulations—Duties of state fire marshal.
- 70.62.900 Severability—1971 ex.s. c 239.

Reviser's note: Throughout this chapter, the terms "this 1971 amendatory act" or "this act" have been changed to "this chapter". "This 1971 amendatory act" and "this act" consist of this chapter, the amendment of RCW 43.22.050 and the repeal of RCW 70.62.010-70.62.130 and 43.22.060-43.22.110 by 1971 ex.s. c 239.

Food and beverage establishment workers' permits: Chapter 69.06 RCW.

Hotels: Chapter 19.48 RCW.

Inspection of hotels: RCW 43.22.050.

Lien of hotels, lodging and boarding houses: Chapter 60.64 RCW.

70.62.200 Purpose. The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of hotels and motels through a licensing program to promote the protection of the health and welfare of individuals using such accommodations in this state. [1971 ex.s. c 239 § 1.]

70.62.210 Definitions. The following terms whenever used or referred to in this chapter shall have the following respective meanings for the purposes of this chapter, except in those instances where the context clearly indicates otherwise:

(1) The term "transient accommodation" shall mean any facility such as a hotel, motel, condominium, resort, or any other facility or place offering three or more lodging units to travelers and transient guests.

(2) The term "person" shall mean any individual, firm, partnership, corporation, company, association or joint stock association, and the legal successor thereof.

(3) The term "secretary" shall mean the secretary of the Washington state department of social and health services and any duly authorized representative thereof.

(4) The term "board" shall mean the Washington state board of health.

(5) The term "department" shall mean the Washington state department of social and health services.

(6) The term "lodging unit" shall mean one self-contained unit designated by number, letter or some other method of identification. [1971 ex.s. c 239 § 2.]

70.62.220 License required—Fee—Display. The person operating a transient accommodation as defined in this chapter shall secure each year an annual operating license and shall pay a fee therefor in the sum of fifteen dollars. The annual licensure period shall run from January 1st through December 31st of each year. The license fee shall be paid to the department prior to the time the license is issued and such license shall be conspicuously displayed in the lobby or office of the facility for which it is issued. [1971 ex.s. c 239 § 3.]

70.62.230 Inspection fee. In addition to the annual license fee, the person operating a transient accommodation shall pay an annual inspection fee if an inspection is made during the course of the year in accordance with the following schedule:

3 to 24 lodging units	.....	\$15.00
25 to 49 lodging units	.....	25.00
50 to 74 lodging units	.....	35.00
75 to 99 lodging units	.....	50.00
100 to 199 lodging units	.....	75.00
200 and up lodging units	.....	100.00

Only one such inspection fee shall be charged during any calendar year regardless of the number of inspections which may be made. [1971 ex.s. c 239 § 4.]

70.62.240 Rules and regulations. The board shall promulgate such rules and regulations, to be effective no sooner than February 1, 1972, as may be necessary to assure that each transient accommodation will be operated and maintained in a manner consistent with the health and welfare of the members of the public using such facilities. Such rules and regulations shall provide for adequate light, heat, ventilation, cleanliness, and sanitation and shall include provisions to assure adequate maintenance. All rules and regulations and amendments thereto shall be adopted in conformance with the provisions of chapter 34.04 RCW. [1971 ex.s. c 239 § 5.]

70.62.250 Powers and duties of department. The department is hereby granted and shall have and exercise, in addition to the powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this chapter, including but not limited to the power:

(1) To develop such rules and regulations for proposed adoption by the board as may be necessary to implement the purposes of this chapter;

(2) To enter and inspect at any reasonable time any transient accommodation and to make such investigations as are reasonably necessary to carry out the provisions of this chapter and any rules and regulations promulgated thereunder: *Provided*, That no room or suite shall be entered for inspection unless said room or suite is not occupied by any patron or guest of the transient accommodation at the time of entry;

(3) To perform such other duties and employ such personnel as may be necessary to carry out the provisions of this chapter; and

(4) To administer and enforce the provisions of this chapter and the rules and regulations promulgated thereunder by the board. [1971 ex.s. c 239 § 6.]

70.62.260 Licenses—Applications—Expiration—Renewal. No person shall operate a transient accommodation as defined in this chapter without having a valid license issued by the department. Applications for a license to operate a transient accommodation shall be filed with the department prior to July 1, 1971, and one-half of the annual license fee shall be included with the application. All licenses issued under the provisions of this chapter shall expire on the first day of January next succeeding the date of issue. All applications for renewal of licenses shall be made not later than thirty days prior to the date of expiration of the license. Each license shall be issued only for the premises and persons named in the application. [1971 ex.s. c 239 § 7.]

70.62.270 Suspension or revocation of licenses. Licenses issued under this chapter may be suspended or revoked upon the failure or refusal of the person operating a transient accommodation to comply with the provisions of this chapter, or of any rules and regulations adopted by the board hereunder. All such proceedings shall be governed by the provisions of chapter 34.04 RCW. [1971 ex.s. c 239 § 8.]

70.62.280 Violations—Penalty. Any violation of this chapter or the rules and regulations promulgated hereunder by any person operating a transient accommodation shall be a misdemeanor and shall be punished as such. Each day of operation of a transient accommodation in violation of this chapter shall constitute a separate offense. [1971 1st ex.s. c 239 § 10.]

70.62.290 Fire and safety rules and regulations—Duties of state fire marshal. Rules and regulations establishing fire and life safety requirements, not inconsistent with the provisions of this chapter, shall continue to be promulgated and enforced by the state fire marshal's office. [1971 ex.s. c 239 § 11.]

70.62.900 Severability—1971 ex.s. c 239. If any section or any portion of any section of this 1971 amendatory act is found to be unconstitutional, the finding shall be to the individual section or portion of section specifically found to be unconstitutional and the balance of the act shall remain in full force and effect. [1971 ex.s. c 239 § 12.]

Chapter 70.70 SALE OR USE OF SHODDY

Sections

70.70.010	"Shoddy" defined.
70.70.020	Sale or use of shoddy—Restrictions.
70.70.030	Duty to enforce chapter—Right of entry.
70.70.035	Prosecution of cases.
70.70.040	Penalty.

70.70.010 "Shoddy" defined. The term "shoddy", as used in this chapter, shall include all materials made or manufactured of rags, old clothing, burlap, old mattresses, quilts or pillows. [1909 c 56 § 2; RRS § 6133.]

70.70.020 Sale or use of shoddy—Restrictions. No person, firm or corporation shall, within this state, sell, offer for sale, or manufacture for sale, what is commonly known as shoddy, or use the same in the manufacture of mattresses, quilts, pillows, rugs, couches, lounges or bedding of any kind or description, unless such commodity has been first properly disinfected or in some other manner rendered free from pathogenic or disease bearing germs. [1909 c 56 § 1; RRS § 6132.]

70.70.030 Duty to enforce chapter—Right of entry. It shall be the duty of all departments of health, health officers, commissioners of health or officials discharging similar duties in the state of Washington to enforce the provisions of this chapter, and they shall have power, in the performance of their official duties, to enter any store or manufacturing establishment where the articles mentioned in RCW 70.70.010 are manufactured or are for sale and make such examination as they deem necessary in order to ascertain whether or not the provisions of this chapter are being violated. [1909 c 56 § 3; RRS § 6134.]

70.70.035 Prosecution of cases. It shall be the duty of the attorney general and prosecuting attorneys of the counties of this state to prosecute all cases arising under the provisions of this chapter. [1909 c 56 § 4; RRS § 6135.]

70.70.040 Penalty. Every person, firm or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. [1909 c 56 § 5; RRS § 6136.]

Chapter 70.72 WIPING RAGS

Sections

70.72.010	Wiping rags defined.
70.72.020	Sale, rental prohibited unless disinfected and sterilized—Minimum standards.
70.72.030	Parcels, packages to be marked.
70.72.040	Registration—Renewal—Fees.
70.72.050	Application for registration number—Contents.
70.72.060	Enforcement of chapter—Entry—Examination—Obstructing inspection.
70.72.070	Prosecutions—Remedies available.
70.72.080	Unlawful acts—Penalty.
70.72.090	Rules by local authorities, state board, not prohibited.

70.72.010 Wiping rags defined. "Wiping rags" as used in this chapter includes any cast-off cloth, fabric, second-hand material, clothing, wearing apparel, or any similar material used for wiping or cleaning the surfaces of machinery, machines, tools, locomotives, engines, motor cars, automobiles, cars, carriages, windows, furniture, surfaces of articles, appliances and engines in factories, shops, steamships, steamboats, generally for cleaning in industrial employment, by mechanics and workmen for wiping hands and bodies soil incident to employment, or for any other wiping or cleaning purpose in any school, hospital, factory, industry, shop, or in any commercial or industrial employment. [1959 c 206 § 1.]

70.72.020 Sale, rental prohibited unless disinfected and sterilized—Minimum standards. No person who sells or rents wiping rags shall sell or rent, or offer to sell or rent the same unless they have first been thoroughly washed and boiled in this state by a process of washing and boiling in a solution containing seventy-six hundredths of one percent caustic and/or chloride of lime and dried at a temperature of at least an average of 212 degrees Fahrenheit, or otherwise disinfected or sterilized in as an efficient manner as prescribed by the Washington state board of health, or unless they have been disinfected and sterilized in another state of the United States whose standards for sterilization are no less stringent than those prescribed by this chapter and the rules and regulations hereunder. [1959 c 206 § 2.]

70.72.030 Parcels, packages to be marked. Every parcel or package of wiping rags before being sold, rented, or offered for sale or rent, shall be plainly marked "Sterilized Wiping Rags" and in addition it shall be plainly marked with the name of the Washington board or its state officer authorizing it to sterilize said wiping rags, the name and location of the establishment in which said wiping rags were laundered and sterilized and the date thereof, and the registration number of the establishment as issued by the Washington state health department. [1959 c 206 § 3.]

70.72.040 Registration—Renewal—Fees. Every person, firm, or corporation who washes, cleanses, or launders wiping rags shall register with the state department of health upon forms to be supplied by the department. The state department of health shall issue a Washington state health department registration number to such applicant upon the payment of a ten dollar fee.

Each registration number shall be renewed annually by the payment of a ten dollar fee. [1959 c 206 § 4.]

70.72.050 Application for registration number—Contents. The application for a registration number or any renewal thereof shall contain such information as the state department of health reasonably requires which may include any information of ability to comply with the standards, rules and regulations as are lawfully prescribed hereunder. [1959 c 206 § 5.]

70.72.060 Enforcement of chapter—Entry—Examination—Obstructing inspection. It shall be the duty of all departments of health, health officers, or other officials discharging similar duties to enforce the provisions of this chapter, and such officials shall upon proper demand have the right to enter any place at reasonable hours for the purpose of making such examination and inspection as he shall deem necessary in order to determine whether or not the provisions of this chapter are being violated. It shall be unlawful for any person to refuse such inspection and examination or to impede or obstruct such official during the inspection and examination. [1959 c 206 § 6.]

70.72.070 Prosecutions—Remedies available. It shall be the duty of the prosecuting attorneys to prosecute all cases arising under the provisions of this chapter and such officers may obtain injunctive relief, abate as a nuisance, or obtain any other relief available by law. [1959 c 206 § 7.]

70.72.080 Unlawful acts—Penalty. Every person who sterilizes wiping rags without first obtaining a registration number, or who wilfully violates any provision of this chapter, or any rule, order, or regulation issued hereunder, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment for not less than thirty days nor more than six months, or by both such fine and imprisonment. Each day upon which a violation occurs shall constitute a separate violation. [1959 c 206 § 8.]

70.72.090 Rules by local authorities, state board, not prohibited. Nothing in this chapter shall be construed so as to prevent the state board of health or any city, town, or health district from promulgating or enacting any rule, regulation, order, or ordinance not inconsistent with and subject to the provisions of this chapter. [1959 c 206 § 9.]

Chapter 70.74

WASHINGTON STATE EXPLOSIVES ACT

Sections

70.74.010	Definitions.
70.74.020	Restrictions on manufacture, sale, or storage—Users—Reports on storage—Waiver.
70.74.025	Magazines—Classification, location and construction—Standards—Use.
70.74.030	Quantity and distance table for storage—Exceptions.
70.74.040	Limit on storage quantity.

- 70.74.050 Quantity and distance table for explosives manufacturing buildings.
- 70.74.061 Quantity and distance table for separation between magazines.
- 70.74.100 Storage of caps with explosives prohibited.
- 70.74.110 Manufacturer's report—Inspection—License.
- 70.74.120 Storage report—Inspection—License—Cancellation.
- 70.74.130 Dealer in explosives—Application—License—Cancellation.
- 70.74.135 Purchaser of explosives—Application—License—Issuance—Cancellation.
- 70.74.137 Purchaser's license fee.
- 70.74.140 Storage license fee.
- 70.74.142 User's license or renewal—Fee.
- 70.74.150 Annual inspection.
- 70.74.160 Unlawful access to explosives.
- 70.74.170 Discharge of firearms or igniting flame near explosives.
- 70.74.180 Explosive devices prohibited—Penalty.
- 70.74.191 Exemptions.
- 70.74.201 Municipal or county ordinances unaffected—State preemption.
- 70.74.210 Coal mining code unaffected.
- 70.74.220 Penalty.
- 70.74.230 Shipments out of state—Dealer's records.
- 70.74.240 Sale to unlicensed person prohibited.
- 70.74.250 Blasting near fur farms and hatcheries.
- 70.74.270 Endangering life and property by explosives—Penalty.
- 70.74.280 Damaging building, etc., by explosion—Penalty.
- 70.74.290 Keeping explosives unlawfully—Penalty.
- 70.74.295 Abandonment of explosives.
- 70.74.297 Separate storage of components capable of detonation when mixed.
- 70.74.300 Explosive containers to be marked—Penalty.
- 70.74.310 Gas bombs, explosives, stink bombs, etc.
- 70.74.320 Small arms ammunition, primers and propellants—Transportation regulations.
- 70.74.330 Small arms ammunition, primers and propellants—Separation from flammable materials.
- 70.74.340 Small arms ammunition, primers and propellants—Transportation, storage and display requirements.
- 70.74.350 Small arms ammunition, primers and propellants—Primers, transportation and storage requirements.

70.74.010 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

The terms "authorized", "approved" or "approval" shall be held to mean authorized, approved, or approval by the department of labor and industries.

The term "blasting agent" shall be held to mean and include any material or mixture consisting of a fuel and oxidizer, intended for blasting, not otherwise classified as an explosive, and in which none of the ingredients are classified as an explosive, provided that the finished product, as mixed and packaged for use or shipment, cannot be detonated when unconfined by means of a No. 8 test blasting cap.

The term "explosive" or "explosives" whenever used in this chapter, shall be held to mean and include any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion, that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities or packing, that an ignition by fire, by friction, by concussion, by percussion, or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb. In addition, the term "explosives" shall include all material which is classified as class A, class B, and class

C explosives by the federal department of transportation: *Provided*, That for the purposes of this chapter small arms ammunition, small arms ammunition primers, smokeless powder not exceeding fifty pounds, and black powder not exceeding five pounds shall not be defined as explosives.

Classification of explosives shall include but not be limited to the following:

CLASS A EXPLOSIVES: (Possessing detonating hazard) dynamite, nitroglycerin, picric acid, lead azide, fulminate of mercury, black powder exceeding five pounds, blasting caps in quantities of 1001 or more, and detonating primers.

CLASS B EXPLOSIVES: (Possessing flammable hazard) propellant explosives, including smokeless propellants exceeding fifty pounds.

CLASS C EXPLOSIVES: (Including certain types of manufactured articles which contain class A or class B explosives, or both, as components but in restricted quantities) blasting caps in quantities of 1000 or less.

The term "explosive-actuated power devices" shall be held to mean any tool or special mechanized device which is actuated by explosives, but not to include propellant-actuated power devices.

The term "magazine", shall be held to mean and include any building or other structure, other than a factory building, used for the storage of explosives.

The term "inhabited building", shall be held to mean and include only a building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other building where people are accustomed to assemble, other than any building or structure occupied in connection with the manufacture, transportation, storage, or use of explosives.

The term "explosives manufacturing plant" shall be held to mean and include all lands, with the buildings situated thereon, used in connection with the manufacturing or processing of explosives or in which any process involving explosives is carried on, or the storage of explosives thereat, as well as any premises where explosives are used as a component part or ingredient in the manufacture of any article or device.

The term "explosives manufacturing building", shall be held to mean and include any building or other structure (excepting magazines) containing explosives, in which the manufacture of explosives, or any processing involving explosives, is carried on, and any building where explosives are used as a component part or ingredient in the manufacture of any article or device.

The term "railroad" shall be held to mean and include any steam, electric, or other railroad which carries passengers for hire.

The term "highway" shall be held to mean and include any public street, public alley, or public road.

The term "efficient artificial barricade" shall be held to mean an artificial mound or properly revetted wall of earth of a minimum thickness of not less than three feet or such other artificial barricade as approved by the department of labor and industries.

The term "person" shall be held to mean and include any individual, firm, copartnership, corporation, company, association, joint stock association, and including any trustee, receiver, assignee, or personal representative thereof.

The term "dealer" shall be held to mean and include any person who purchases explosives or blasting agents for the sole purpose of resale, and not for use or consumption.

The term "forbidden or not acceptable explosives" shall be held to mean and include explosives which are forbidden or not acceptable for transportation by common carriers by rail freight, rail express, highway, or water in accordance with the regulations of the federal department of transportation.

The term "handloader" shall be held to mean and include any person who engages in the noncommercial assembling of small arms ammunition for his own use, specifically the operation of installing new primers, powder, and projectiles into cartridge cases.

The term "handloader components" means small arms ammunition, small arms ammunition primers, smokeless powder not exceeding fifty pounds, and black powder as used in muzzle loading firearms not exceeding five pounds.

The term "fuel" shall be held to mean and include a substance which may react with the oxygen in the air or with the oxygen yielded by an oxidizer to produce combustion.

The term "motor vehicle" shall be held to mean and include any self-propelled automobile, truck, tractor, semi-trailer or full trailer, or other conveyance used for the transportation of freight.

The term "natural barricade" shall be held to mean and include any natural hill, mound, wall, or barrier composed of earth or rock or other solid material of a minimum thickness of not less than three feet.

The term "oxidizer" shall be held to mean a substance that yields oxygen readily to stimulate the combustion of organic matter or other fuel.

The term "propellant-actuated power device" shall be held to mean and include any tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge.

The term "public conveyance" shall be held to mean and include any railroad car, streetcar, ferry, cab, bus, airplane, or other vehicle which is carrying passengers for hire.

The term "public utility transmission system" shall mean power transmission lines over 10 KV, telephone cables, or microwave transmission systems, or buried or exposed pipelines carrying water, natural gas, petroleum, or crude oil, or refined products and chemicals, whose services are regulated by the utilities and transportation commission, municipal, or other publicly owned systems.

The term "purchaser" shall be held to mean any person who buys, accepts, or receives any explosives or blasting agents.

The term "pyrotechnics" shall be held to mean and include any combustible or explosive compositions or manufactured articles designed and prepared for the

purpose of producing audible or visible effects which are commonly referred to as fireworks.

The term "small arms ammunition" shall be held to mean and include any shotgun, rifle, pistol, or revolver cartridge, and cartridges for propellant-actuated power devices and industrial guns. Military-type ammunition containing explosive bursting charges, incendiary, tracer, spotting, or pyrotechnic projectiles is excluded from this definition.

The term "small arms ammunition primers" shall be held to mean small percussion-sensitive explosive charges encased in a cup, used to ignite propellant powder and shall include percussion caps as used in muzzle loaders.

The term "smokeless propellants" shall be held to mean and include solid chemicals or solid chemical mixtures in excess of fifty pounds which function by rapid combustion.

The term "user" shall be held to mean and include any natural person, manufacturer, or blaster who acquires, purchases, or uses explosives as an ultimate consumer or who supervises such use.

Words used in the singular number shall include the plural, and the plural the singular. [1972 ex.s. c 88 § 5; 1970 ex.s. c 72 § 1; 1969 ex.s. c 137 § 3; 1931 c 111 § 1; RRS § 5440-1.]

Severability—1931 c 111: "In case any provision of this act shall be adjudged unconstitutional, or void for any other reason, such adjudication shall not affect any of the other provisions of this act." [1931 c 111 § 19.]

Use of words: RCW 1.12.050.

70.74.020 Restrictions on manufacture, sale, or storage—Users—Reports on storage—Waiver. No person shall manufacture, possess, store, sell, purchase, transport, or use explosives or blasting agents except in compliance with this chapter.

The director of the department of labor and industries shall make and promulgate rules and regulations concerning qualifications of users of explosives and shall have the authority to issue licenses for users of explosives to effectuate the purpose of this chapter: *Provided*, That where there is a finding by the director that the use or disposition of explosives in any class of industry presents no unusual hazard to the safety of life or limb of persons employed therewith, and where the users are supervised by a superior in an employment relationship who is sufficiently experienced in the use of explosives, and who possesses a license for such use under this chapter, the director in his discretion may exclude said users in those classes of industry from individual licensing.

The director of the department of labor and industries shall make and promulgate rules and regulations concerning the manufacture, sale, purchase, use, transportation, storage, and disposal of explosives, and shall have the authority to issue licenses for the manufacture, purchase, sale, use, transportation, and storage of explosives to effectuate the purpose of this chapter. The director of the department of labor and industries is hereby delegated the authority to grant written waiver of this chapter whenever it can be shown that the manufacturing,

handling, or storing of explosives are in compliance with applicable national or federal explosive safety standards: *Provided*, That any resident of this state who is qualified to purchase explosives in this state and who has complied with the provisions of this chapter applicable to him may purchase explosives from an authorized dealer of a bordering state and may transport said explosives into this state for use herein: *Provided further*, That residents of this state shall, within ten days of the date of purchase, present to the department of labor and industries a report signed by both vendor and vendee of every purchase from an out of state dealer, said report indicating the date of purchase, name of vendor, vendor's license number, vendor's business address, amount and kind of explosives purchased, the name of the purchaser, the purchaser's license number, and the name of receiver if different than purchaser.

It shall be unlawful to sell, give away or otherwise dispose of, or deliver to any person under twenty-one years of age any explosives other than small arms ammunition and handloader components, whether said person is acting for himself or for any other person: *Provided*, That if there is a finding by the director that said use or disposition of explosives poses no unusual hazard to the safety of life or limb in any class of industry, where persons eighteen years of age or older are employed as users, and where said persons are adequately trained and adequately supervised by a superior in an employment relationship who is sufficiently experienced in the use of explosives, and who possesses a valid license for such use under this chapter, the director in his discretion may exclude said persons in that class of industry from said minimum age requirement.

All persons engaged in keeping, using or storing any compound, mixture or material, in wet condition, or otherwise, which upon drying out or undergoing other physical changes, may become an explosive within the definition of RCW 70.74.010, shall report in writing subscribed to by such person or his agent, to the department of labor and industries, report blanks to be furnished by such department, and such reports to require:

(1) The kind of compound, mixture or material kept or stored, and maximum quantity thereof.

(2) Condition or state of compound, mixture or material.

(3) Place where kept or stored.

The department of labor and industries may at any time cause an inspection to be made to determine whether the condition of the compound, mixture or material is as reported. [1972 ex.s. c 88 § 6; 1969 ex.s. c 137 § 4; 1967 c 99 § 1; 1931 c 111 § 2; RRS § 5440-2.]

70.74.025 Magazines—Classification, location and construction—Standards—Use. The director of the department of labor and industries shall establish by rule or regulation requirements for classification, location and construction of magazines for storage of explosives in compliance with accepted applicable explosive safety standards. All explosives shall be kept in magazines which meet the requirements of this chapter. [1969 ex.s. c 137 § 9.]

70.74.030 Quantity and distance table for storage—Exceptions. All explosive manufacturing buildings and magazines in which explosives or blasting agents except small arms ammunition and smokeless powder are had, kept, or stored, must be located at distances from inhabited buildings, railroads, highways, and public utility transmission systems in conformity with the following quantity and distance tables, and these tables shall be the basis on which applications for license for storage shall be made and license for storage issued, as provided in RCW 70.74.110 and 70.74.120. All distances prescribed in the following quantity and distance tables are unbarricaded, and, if there is an efficient artificial barricade or a natural barricade between the explosives manufacturing building or magazine and another explosives manufacturing building or magazine, building, railroad, highway, or public utility transmission system, the distance prescribed in the following quantity and distance tables may be reduced by one-half. Blasting and electric blasting caps in strength through No. 8 must be rated as one and one-half pounds of explosives per one thousand caps. Blasting and electric blasting caps of strength higher than No. 8 must be computed on the combined weight of explosives.

The quantity and distance table governing the manufacture, keeping and storage of explosives to be as follows:

QUANTITY AND DISTANCE TABLE

Column 1 Quantity that may be had, kept or stored		Column 2 Distance from Nearest Inhabited Building	Column 3 Distance From Nearest Railroad	Column 4 Distance from Nearest Highway and Public Utility Transmission System
Pounds Over	Pounds Not Over	Feet	Feet	Feet
EXPLOSIVES				
2	5	140	60	60
5	10	180	70	70
10	20	220	90	90
20	30	250	100	100
30	40	280	110	110
40	50	300	120	120
50	75	340	140	140
75	100	380	150	150
100	125	400	160	160
125	150	430	170	170
150	200	470	190	190
200	250	510	210	210
250	300	540	220	220
300	400	590	240	240
400	500	640	260	260
500	600	680	270	270
600	700	710	290	290
700	800	750	300	300
800	900	780	310	310
900	1,000	800	320	320
1,000	1,200	850	340	330
1,200	1,400	900	360	340
1,400	1,600	940	380	350
1,600	1,800	980	390	360
1,800	2,000	1,010	410	370
2,000	2,500	1,090	440	380
2,500	3,000	1,160	470	390
3,000	4,000	1,270	510	420

Column 1 Quantity that may be had, kept or stored		Column 2 Distance from Nearest Inhabited Building	Column 3 Distance From Nearest Railroad	Column 4 Distance from Nearest Highway and Public Utility Transmission System
EXPLOSIVES				
Pounds Over	Pounds Not Over	Feet	Feet	Feet
4,000	5,000	1,370	550	450
5,000	6,000	1,460	590	470
6,000	7,000	1,540	620	490
7,000	8,000	1,600	640	500
8,000	9,000	1,670	670	510
9,000	10,000	1,730	690	520
10,000	12,000	1,750	740	540
12,000	14,000	1,770	780	550
14,000	16,000	1,800	810	560
16,000	18,000	1,880	840	570
18,000	20,000	1,950	870	580
20,000	25,000	2,110	940	630
25,000	30,000	2,260	1,000	680
30,000	35,000	2,410	1,050	720
35,000	40,000	2,550	1,100	760
40,000	45,000	2,680	1,140	800
45,000	50,000	2,800	1,180	840
50,000	55,000	2,920	1,220	880
55,000	60,000	3,030	1,260	910
60,000	65,000	3,130	1,290	940
65,000	70,000	3,220	1,320	970
70,000	75,000	3,310	1,350	1,000
75,000	80,000	3,390	1,380	1,020
80,000	85,000	3,460	1,410	1,040
85,000	90,000	3,520	1,440	1,060
90,000	95,000	3,580	1,460	1,080
95,000	100,000	3,630	1,490	1,090
100,000	110,000	3,670	1,540	1,100
110,000	120,000	3,710	1,580	1,110
120,000	130,000	3,750	1,620	1,120
130,000	140,000	3,780	1,670	1,130
140,000	150,000	3,800	1,700	1,140
150,000	160,000	3,870	1,740	1,160
160,000	170,000	3,930	1,780	1,180
170,000	180,000	3,980	1,810	1,200
180,000	190,000	4,020	1,840	1,210
190,000	200,000	4,060	1,870	1,220
200,000	210,000	4,110	1,910	1,240
210,000	230,000	4,200	1,960	1,270
230,000	250,000	4,310	2,020	1,300
250,000	275,000	4,430	2,080	1,340
275,000	300,000	4,550	2,150	1,380

[1972 ex.s. c 88 § 7; 1969 ex.s. c 137 § 10; 1931 c 111 § 5; RRS § 5440-5.]

70.74.040 Limit on storage quantity. No quantity in excess of three hundred thousand pounds, or the equivalent in blasting caps shall be had, kept or stored in any factory building or magazine in this state. [1970 ex.s. c 72 § 2; 1931 c 111 § 4; RRS § 5440-4.]

70.74.050 Quantity and distance table for explosives manufacturing buildings. All explosives manufacturing buildings shall be located one from the other and from other buildings on explosives manufacturing plants in which persons are regularly employed, and all magazines shall be located from factory buildings and buildings on explosives plants in which persons are regularly employed, in conformity with the intraexplosives plant quantity and distance table below set forth:

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EXPLOSIVES		
Pounds Over	Pounds Not Over	Distance Feet
.....	10	
10	25	40
25	50	60
50	100	80
100	200	100
200	300	120
300	400	130
400	500	140
500	750	160
750	1,000	180
1,000	1,500	210
1,500	2,000	230
2,000	3,000	260
3,000	4,000	280
4,000	5,000	300
5,000	6,000	320
6,000	7,000	340
7,000	8,000	360
8,000	9,000	380
9,000	10,000	400
10,000	12,500	420
12,500	15,000	450
15,000	17,500	470
17,500	20,000	490
20,000	25,000	530
25,000	30,000	560
30,000	35,000	590
35,000	40,000	620
40,000	45,000	640
45,000	50,000	660
50,000	55,000	680
55,000	60,000	700
60,000	65,000	720
65,000	70,000	740
70,000	75,000	770
75,000	80,000	780
80,000	85,000	790
85,000	90,000	800
90,000	95,000	820
95,000	100,000	830
100,000	125,000	900
125,000	150,000	950
150,000	175,000	1,000
175,000	200,000	1,050
200,000	225,000	1,100
225,000	250,000	1,150

[1972 ex.s. c 88 § 8; 1931 c 111 § 5; RRS § 5440-5.]

70.74.061 Quantity and distance table for separation between magazines. Magazines containing blasting caps and electric blasting caps shall be separated from other magazines containing like contents, or from magazines containing explosives by distances based on the following:

- (1) Blasting caps in strengths through No. 8 should be rated at one and one-half pounds of explosive per one thousand caps;
- (2) For strengths higher than No. 8, use the total combined weight of explosives;
- (3) Magazines in which explosives are kept and stored shall be detached from other structures and separated

from other magazines in conformity with the quantity and distance table set forth below:

QUANTITY AND DISTANCE TABLE FOR SEPARATION BETWEEN MAGAZINES CONTAINING EXPLOSIVES

Pounds Over	Pounds Not Over	Separation Distance in Feet Between Magazines	
		Not Barricaded	Barricaded
2	5	12	6
5	10	16	8
10	20	20	10
20	30	22	11
30	40	24	12
40	50	28	14
50	75	30	15
75	100	32	16
100	125	36	18
125	150	38	19
150	200	42	21
200	250	46	23
250	300	48	24
300	400	54	27
400	500	58	29
500	600	62	31
600	700	64	32
700	800	66	33
800	900	70	35
900	1,000	72	36
1,000	1,200	78	39
1,200	1,400	82	41
1,400	1,600	86	43
1,600	1,800	88	44
1,800	2,000	90	45
2,000	2,500	98	49
2,500	3,000	104	52
3,000	4,000	116	58
4,000	5,000	122	61
5,000	6,000	130	65
6,000	7,000	136	68
7,000	8,000	144	72
8,000	9,000	150	75
9,000	10,000	156	78
10,000	12,000	164	82
12,000	14,000	174	87
14,000	16,000	180	90
16,000	18,000	188	94
18,000	20,000	196	98
20,000	25,000	210	105
25,000	30,000	224	112
30,000	35,000	238	119
35,000	40,000	248	124
40,000	45,000	258	129
45,000	50,000	270	135
50,000	55,000	280	140
55,000	60,000	290	145
60,000	65,000	300	150
65,000	70,000	310	155
70,000	75,000	320	160
75,000	80,000	330	165
80,000	85,000	340	170
85,000	90,000	350	175
90,000	95,000	360	180
95,000	100,000	370	185
100,000	110,000	380	195
110,000	120,000	410	205
120,000	130,000	430	215
130,000	140,000	450	225
140,000	150,000	470	235
150,000	160,000	490	245
160,000	170,000	510	255
170,000	180,000	530	265
180,000	190,000	550	275

Pounds Over	Pounds Not Over	Separation Distance in Feet Between Magazines	
		Not Barricaded	Barricaded
190,000	200,000	570	285
200,000	210,000	590	295
210,000	230,000	630	315
230,000	250,000	670	335
250,000	275,000	720	360
275,000	300,000	770	385

[1969 ex.s. c 137 § 11.]

70.74.100 Storage of caps with explosives prohibited. No blasting caps, or other detonating or fulminating caps, or detonators, or flame-producing devices shall be kept or stored in any magazine in which other explosives are kept or stored. [1969 ex.s. c 137 § 12; 1931 c 111 § 10; RRS § 5440-10.]

70.74.110 Manufacturer's report—Inspection—License. All persons engaged in the manufacture of explosives, or any process involving explosives, or where explosives are used as a component part in the manufacture of any article or device, on the date when this 1969 amendatory act takes effect, shall within sixty days thereafter, and all persons engaging in the manufacture of explosives, or any process involving explosives, or where explosives are used as a component part in the manufacture of any article or device after this act takes effect shall, before so engaging, make an application in writing, subscribed to by such person or his agent, to the department of labor and industries, the application stating:

- (1) Location of place of manufacture or processing;
- (2) Kind of explosives manufactured, processed or used;
- (3) The distance that such explosives manufacturing building is located or intended to be located from the other factory buildings, magazines, inhabited buildings, railroads and highways and public utility transmission systems;
- (4) The name and address of the applicant;
- (5) The reason for desiring to manufacture explosives;
- (6) The applicant's citizenship, if the applicant is an individual;
- (7) If the applicant is a partnership, the names and addresses of the partners, and their citizenship;
- (8) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof, and their citizenship; and
- (9) Such other pertinent information as the director of labor and industries shall require to effectuate the purpose of this chapter.

There shall be kept in the main office on the premises of each explosives manufacturing plant a plan of said plant showing the location of all explosives manufacturing buildings and the distance they are located from other factory buildings where persons are employed and from magazines, and these plans shall at all times be open to inspection by duly authorized inspectors of the department of labor and industries. The superintendent

of each plant shall upon demand of said inspector furnish the following information:

(a) The maximum amount and kind of explosive material which is or will be present in each building at one time.

(b) The nature and kind of work carried on in each building and whether or not said buildings are surrounded by natural or artificial barricades.

The department of labor and industries shall as soon as may be after receiving such application cause an inspection to be made of the explosives manufacturing plant, and if found to be in accordance with RCW 70.74.030 and 70.74.050 and RCW 70.74.061, such department shall issue a license to the person applying therefor showing compliance with the provisions of this chapter, unless the department shall find that the applicant or the officers, agents or employees of the applicant are not sufficiently experienced in the manufacture of explosives, have been convicted of a crime involving moral turpitude, or are disloyal to the United States. Such license shall continue in full force and effect until surrendered or canceled, because of failure to comply with any of the conditions necessary for the granting of a license. [1969 ex.s. c 137 § 13; 1941 c 101 § 1; 1931 c 111 § 11; Rem. Supp. 1941 § 5440-1.]

Effective date—1969 ex.s. c 137: The effective date of 1969 ex.s. c 137 was August 11, 1969.

70.74.120 Storage report—Inspection—License—Cancellation. All persons engaged in keeping or storing and all persons having in their possession explosives on the date when this 1969 amendatory act takes effect shall within sixty days thereafter, and all persons engaging in keeping or storing explosives or coming into possession thereof after this act takes effect, shall before engaging in the keeping or storing of explosives or taking possession thereof, make an application in writing subscribed to by such person or his agent, to the department of labor and industries stating:

(1) The location of the magazine, if any, if then existing, or in case of a new magazine, the proposed location of such magazine;

(2) The kind of explosives that are kept or stored or possessed or intended to be kept or stored or possessed and the maximum quantity that is intended to be kept or stored or possessed thereat;

(3) The distance that such magazine is located or intended to be located from other magazines, inhabited buildings, explosives manufacturing buildings, railroads, highways and public utility transmission systems;

(4) The name and address of the applicant;

(5) The reason for desiring to store or possess explosives;

(6) The citizenship of the applicant if the applicant is an individual;

(7) If the applicant is a partnership, the names and addresses of the partners and their citizenship;

(8) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof and their citizenship;

(9) And such other pertinent information as the director of the department of labor and industries shall require to effectuate the purpose of this chapter.

The department of labor and industries shall, as soon as may be after receiving such application, cause an inspection to be made of the magazine, if then constructed, and, in the case of a new magazine, as soon as may be after same is found to be constructed in accordance with the specification provided in RCW 70.74.025, such department shall determine the amount of explosives that may be kept and stored in such magazine by reference to the quantity and distance tables set forth in RCW 70.74.030, 70.74.050 and 70.74.061, and shall issue a license to the person applying therefor, unless the department shall find that such applicant is not sufficiently experienced in the handling of explosives, lacks suitable facilities therefor, has been convicted of a crime involving moral turpitude, or is disloyal to the United States. Said license shall set forth the maximum quantity of explosives that may be had, kept or stored by said person. Such license shall be valid until canceled for one or more of the causes hereinafter provided. Whenever by reason of change in the physical conditions surrounding said magazine at the time of the issuance of the license therefor, such as:

(a) The erection of buildings nearer said magazine;

(b) The construction of railroads nearer said magazine;

(c) The opening for public travel of highways nearer said magazine; or

(d) The construction of public utilities transmission systems near said magazine; then the amounts of explosives which may be lawfully had, kept or stored in said magazine must be reduced to conform to such changed conditions in accordance with the quantity and distance table notwithstanding the license, and the department of labor and industries shall modify or cancel such license in accordance with the changed conditions. Said license may also be canceled if the department of labor and industries shall find that the applicant is keeping explosives for an unlawful purpose or is disloyal to the United States. Whenever any person to whom a license has been issued, keeps or stores in the magazine or has in his possession, any quantity of explosives in excess of the maximum amount set forth in said license, or whenever any person fails for thirty days to pay the annual license fee hereinafter provided after the same becomes due, the department is authorized to cancel such license. Whenever a license is canceled by the department for any cause herein specified, the department shall notify the person to whom such license is issued of the fact of such cancellation and shall in said notice direct the removal of all explosives stored in said magazine within ten days from the giving of said notice, or, if the cause of cancellation be the failure to pay the annual license fee, or the fact that explosives are kept for an unlawful purpose, or the applicant is disloyal to the United States, the department of labor and industries shall order such person to dispossess himself of said explosives within ten days from the giving of said notice. Failure to remove the explosives stored in said magazine or to dispossess oneself of the explosives as herein provided within the

time specified in said notice shall constitute a violation of this chapter. [1969 ex.s. c 137 § 14; 1941 c 101 § 2; 1931 c 111 § 12; Rem. Supp. 1941 § 5440-12.]

Effective date—1969 ex.s. c 137: The effective date of 1969 ex.s. c 137 was August 11, 1969.

70.74.130 Dealer in explosives—Application—License—Cancellation. Every person desiring to engage in the business of dealing in explosives shall apply to the department of labor and industries for a license therefor. Said application shall state, among other things:

- (1) The name and address of applicant;
- (2) The reason for desiring to engage in the business of dealing in explosives;
- (3) Citizenship, if an individual applicant;
- (4) If a partnership, the names and addresses of the partners and their citizenship;
- (5) If an association or corporation, the names and addresses of the officers and directors thereof and their citizenship; and
- (6) Such other pertinent information as the director of labor and industries shall require to effectuate the purpose of this chapter.

The department of labor and industries shall issue the license applied for unless the department finds that either the applicant or any of the officers, agents or employees of the applicant are not sufficiently experienced in the business of dealing in explosives, lack suitable facilities therefor, have been convicted of a crime involving moral turpitude, or are disloyal to the United States. Said license may be canceled for any cause that would prevent the initial issuance thereof. [1969 ex.s. c 137 § 16; 1941 c 101 § 3; Rem. Supp. 1941 § 5440-12a.]

70.74.135 Purchaser of explosives—Application—License—Issuance—Cancellation. All persons desiring to purchase explosives except handloader components shall apply to the department of labor and industries for a license. Said application shall state, among other things:

- (1) The location where explosives are to be used;
- (2) The kind and amount of explosives to be used;
- (3) The name and address of the applicant;
- (4) The reason for desiring to use explosives;
- (5) The citizenship of the applicant if the applicant is an individual;
- (6) If the applicant is a partnership, the names and addresses of the partners and their citizenship;
- (7) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof and their citizenship; and
- (8) Such other pertinent information as the director of the department of labor and industries shall require to effectuate the purpose of this chapter.

The department of labor and industries shall issue the license applied for unless the department finds that either the applicant or any of the officers, agents or employees of the applicant are not sufficiently experienced in the use of explosives, lack suitable facilities therefor, have been convicted of a felony involving force

or violence, or are disloyal to the United States. Said license may be canceled for any cause that would prevent the initial issuance thereof; or for any violation of this chapter. [1971 ex.s. c 302 § 7; 1970 ex.s. c 72 § 3; 1969 ex.s. c 137 § 18.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

70.74.137 Purchaser's license fee. Every person applying for a purchaser's license, or renewal thereof, shall pay an annual license fee of two dollars. Said license fee shall accompany the application, and be by the department turned over to the state treasurer: *Provided*, That if the applicant is denied a purchaser's license the license fee shall be returned to said applicant by registered mail. [1972 ex.s. c 88 § 2.]

70.74.140 Storage license fee. Every person engaging in the business of keeping or storing of explosives, shall pay an annual license fee for each magazine maintained, to be graduated by the department of labor and industries according to the quantity kept or stored therein, of not less than one dollar nor more than fifty dollars. Said license fee shall accompany the application, and be by the department turned over to the state treasurer. [1969 ex.s. c 137 § 15; 1931 c 111 § 13; RRS § 5440-13.]

70.74.142 User's license or renewal—Fee. Every person applying for a user's license, or renewal thereof, under this chapter shall pay an annual license fee of three dollars. Said license fee shall accompany the application, and be turned over by the department to the state treasurer: *Provided*, That if the applicant is denied a user's license the license fee shall be returned to said applicant by registered mail. [1972 ex.s. c 88 § 1.]

70.74.150 Annual inspection. The department of labor and industries shall make, or cause to be made, at least one inspection during every year, of each licensed explosives plant or magazine. [1931 c 111 § 14; RRS § 5440-14.]

70.74.160 Unlawful access to explosives. No person, except an official as authorized herein or a person authorized to do so by the owner thereof, or his agent, shall enter any explosives manufacturing building, magazine or car, vehicle or other common carrier containing explosives in this state. [1969 ex.s. c 137 § 19; 1931 c 111 § 15; RRS § 5440-15.]

70.74.170 Discharge of firearms or igniting flame near explosives. No person shall discharge any firearms at or against any magazine or explosives manufacturing buildings or ignite any flame or flame-producing device nearer than two hundred feet from said magazine or explosives manufacturing building. [1969 ex.s. c 137 § 20; 1931 c 111 § 16; RRS § 5440-16.]

70.74.180 Explosive devices prohibited—Penalty. Any person who shall have in his possession or control any shell, bomb or similar device, charged or filled with one or more explosives, intending to use the same or cause same to be used for an unlawful purpose, shall be

deemed guilty of a felony, and upon conviction, shall be punished by imprisonment in a state prison for a term of not less than five years nor more than twenty-five years. [1969 ex.s. c 137 § 21; 1931 c 111 § 18; RRS § 5440-18.]

70.74.191 Exemptions. The laws contained in this chapter and the ensuing regulations prescribed by the department of labor and industries shall not apply to:

(1) Explosives or blasting agents in the course of transportation by way of railroad, water, highway or air under the jurisdiction of, and in conformity with, regulations adopted by the federal department of transportation, the Washington state utilities and transportation commission and the Washington state patrol;

(2) The laboratories of schools, colleges and similar institutions if confined to the purpose of instruction or research and if not exceeding the quantity of one pound;

(3) Explosives in the forms prescribed by the official United States Pharmacopoeia;

(4) The transportation, storage and use of explosives or blasting agents in the normal and emergency operations of federal agencies and departments including the regular United States military departments on military reservations, or the duly authorized militia of any state or territory, or to emergency operations of any state department or agency, any police, or any municipality or county;

(5) The sale and use of fireworks, signaling devices, flares, fuses, and torpedoes;

(6) Any violation under this chapter if any existing ordinance of any city, municipality or county is more stringent than this chapter. [1969 ex.s. c 137 § 5.]

70.74.201 Municipal or county ordinances unaffected—State preemption. This chapter shall not affect, modify or limit the power of a city, municipality or county in this state to make an ordinance that is more stringent than this chapter which is applicable within their respective corporate limits or boundaries: *Provided*, That the state shall be deemed to have preempted the field of regulation of small arms ammunition and hand-loader components. [1970 ex.s. c 72 § 5; 1969 ex.s. c 137 § 6.]

70.74.210 Coal mining code unaffected. All acts and parts of acts inconsistent with this act are hereby repealed: *Provided, however*, That nothing in this act shall be construed as amending, limiting, or repealing any provision of chapter 36, session laws of 1917, known as the coal mining code. [1931 c 111 § 22; RRS § 5440-22.]

Coal mining code: Chapter 78.40 RCW.

70.74.220 Penalty. Except as otherwise provided by the specific penalty provisions in this chapter, whoever fails to comply with or violates any of the provisions of this chapter shall be guilty of a gross misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars. [1969 ex.s. c 137 § 7; 1931 c 111 § 17; RRS § 5440-17.]

70.74.230 Shipments out of state—Dealer's records. If any manufacturer of explosives or dealer therein shall have shipped any explosives into another state, and the laws of such other state shall designate an officer or agency to regulate the possession, receipt or storage of explosives, and such officer or agency shall so require, such manufacturer shall, at least once each calendar month, file with such officer or agency of such other state a report giving the names of all purchasers and the amount and description of all explosives sold or delivered in such other state. Dealers in explosives shall keep a record of all explosives purchased or sold by them, which record shall include the name and address of each vendor and vendee, the date of each sale or purchase, and the amount and kind of explosives sold or purchased. Such records shall be open for inspection by the duly authorized agents of the department of labor and industries and by all federal, state and local law enforcement officers at all times, and a copy of such record shall be furnished once each calendar month to the department of labor and industries in such form as said department shall prescribe. [1941 c 101 § 4; Rem. Supp. 1941 § 5440-23.]

70.74.240 Sale to unlicensed person prohibited. No dealer shall sell, barter, give or dispose of explosives to any person who does not hold a license to purchase explosives issued under the provisions of this chapter. [1970 ex.s. c 72 § 4; 1969 ex.s. c 137 § 17; 1941 c 101 § 5; Rem. Supp. 1941 § 5440-24.]

70.74.250 Blasting near fur farms and hatcheries. Between the dates of January 15th and June 15th of each year it shall be unlawful for any person to do, or cause to be done, any blasting within fifteen hundred feet from any fur farm or commercial hatchery except in case of emergency without first giving to the person in charge of such farm or hatchery twenty-four hours notice: *Provided, however*, That in the case of an established quarry and sand and gravel operations, and where it is necessary for blasting to be done continually, the notice required in this section may be made at the beginning of the period each year when blasting is to be done. [1941 c 107 § 1; Rem. Supp. 1941 § 5440-25.]

70.74.270 Endangering life and property by explosives—Penalty. Every person who shall maliciously place any explosive substance or material in, upon, under, against or near any building, car, vessel, railroad track, airplane, public utility transmission system, or structure, in such manner or under such circumstances as to destroy or injure the same if exploded, shall be guilty of a felony, and if the circumstances and surroundings are such that the safety of any person might be endangered by the explosion thereof, shall be punished by imprisonment in the state penitentiary for not more than twenty-five years. [1971 ex.s. c 302 § 8; 1969 ex.s. c 137 § 23; 1909 c 249 § 400; RRS § 2652.]

70.74.280 Damaging building, etc., by explosion—Penalty. Every person who shall maliciously, by the explosion of gunpowder or any other explosive substance

or material, destroy or damage any building, car, airplane, vessel, common carrier, railroad track, public utility transmission system or structure, shall be punished as follows:

(1) If thereby the life or safety of a human being is endangered, by imprisonment in the state penitentiary for not more than twenty-five years;

(2) In every other case by imprisonment in the state penitentiary for not more than five years. [1971 ex.s. c 302 § 9; 1969 ex.s. c 137 § 24; 1909 c 249 § 401; RRS § 2653.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.
Death by unlawful keeping of explosives: RCW 9.48.140.

70.74.290 Keeping explosives unlawfully—Penalty. Every person who shall make or keep any explosive in any city or village, or carry it through the streets thereof in a quantity, or manner prohibited by law, or by ordinance of such municipality; and every person who, by careless, negligent or unauthorized use or management of any such explosive, shall injure or cause injury to the person or property of another, shall be guilty of a gross misdemeanor. [1969 ex.s. c 137 § 25; 1909 c 249 § 252; RRS § 2504.]

70.74.295 Abandonment of explosives. It shall be unlawful for any person to abandon explosives or explosive substances. [1972 ex.s. c 88 § 3.]

70.74.297 Separate storage of components capable of detonation when mixed. Any two components which, when mixed, become capable of detonation by a No. 6 cap must be stored in separate locked containers or in a licensed, approved magazine. [1972 ex.s. c 88 § 4.]

70.74.300 Explosive containers to be marked—Penalty. Every person who shall put up for sale, or who shall deliver to any warehouseman, dock, depot, or common carrier any package, cask or can containing any explosive, nitroglycerin, dynamite, or powder, without having been properly labeled thereon to indicate its explosive classification, shall be guilty of a gross misdemeanor. [1969 ex.s. c 137 § 26; 1909 c 249 § 254; RRS § 2506.]

Reviser's note: Caption for 1909 c 249 § 254 reads as follows: "Sec. 254. *Transporting Explosives.*"

70.74.310 Gas bombs, explosives, stink bombs, etc. Any person other than a lawfully constituted peace officer of this state who shall deposit, leave, place, spray, scatter, spread or throw in any building, or any place, or who shall counsel, aid, assist, encourage, incite or direct any other person or persons to deposit, leave, place, spray, scatter, spread or throw, in any building or place, or who shall have in his possession for the purpose of, and with the intent of depositing, leaving, placing, spraying, scattering, spreading or throwing, in any building or place, or of counseling, aiding, assisting, encouraging, inciting or directing any other person or persons to deposit, leave, place, spray, scatter, spread or throw, any stink bomb, stink paint, tear bomb, tear shell, explosive or flame-producing device, or any other device,

material, chemical or substance, which, when exploded or opened, or without such exploding or opening, by reason of its offensive and pungent odor, does or will annoy, injure, endanger or inconvenience any person or persons, shall be guilty of a gross misdemeanor: *Provided*, That this section shall not apply to persons in the military service, actually engaged in the performance of military duties, pursuant to orders from competent authority nor to any property owner or person acting under his authority in providing protection against the commission of a felony. [1969 ex.s. c 137 § 27; 1927 c 245 § 1; RRS § 2504-1.]

70.74.320 Small arms ammunition, primers and propellants—Transportation regulations. The federal regulations of the United States department of transportation on the transportation of small arms ammunition, of small arms ammunition primers, and of small arms smokeless propellants are hereby adopted in this chapter by reference.

The director of the department of labor and industries has the authority to issue future regulations in accordance with amendments and additions to the federal regulations of the United States department of transportation on the transportation of small arms ammunition, of small arms ammunition primers, and of small arms smokeless propellants. [1969 ex.s. c 137 § 28.]

70.74.330 Small arms ammunition, primers and propellants—Separation from flammable materials. Small arms ammunition shall be separated from flammable liquids, flammable solids and oxidizing materials by a fire-resistant wall of one-hour rating or by a distance of twenty-five feet. [1969 ex.s. c 137 § 29.]

70.74.340 Small arms ammunition, primers and propellants—Transportation, storage and display requirements. Quantities of small arms smokeless propellant (class B) in shipping containers approved by the federal department of transportation not in excess of fifty pounds may be transported in a private vehicle.

Quantities in excess of twenty-five pounds but not to exceed fifty pounds in a private passenger vehicle shall be transported in an approved magazine as specified by the department of labor and industries rules and regulations.

Transportation of quantities in excess of fifty pounds is prohibited in passenger vehicles: *Provided*, That this requirement shall not apply to duly licensed dealers.

Transportation of quantities in excess of fifty pounds shall be in accordance with federal department of transportation regulations.

Small arms smokeless propellant intended for personal use in quantities not to exceed twenty-five pounds may be stored without restriction in residences; quantities over twenty-five pounds but not to exceed fifty pounds shall be stored in a strong box or cabinet constructed with three-fourths inch plywood (minimum), or equivalent, on all sides, top, and bottom.

Black powder as used in muzzle loading firearms may be transported in a private vehicle or stored without

restriction in private residences in quantities not to exceed five pounds.

Not more than seventy-five pounds of small arms smokeless propellant, in containers of one pound maximum capacity may be displayed in commercial establishments.

Not more than twenty-five pounds of black powder as used in muzzle loading firearms may be stored in commercial establishments of which not more than four pounds in containers of one pound maximum capacity may be displayed.

Quantities in excess of one hundred fifty pounds of smokeless propellant or twenty-five pounds of black powder as used in muzzle loading firearms shall be stored in magazines constructed as specified in the rules and regulations for construction of magazines, and located in compliance with this chapter.

All small arms smokeless propellant when stored shall be packed in federal department of transportation approved containers. [1970 ex.s. c 72 § 6; 1969 ex.s. c 137 § 30.]

70.74.350 Small arms ammunition, primers and propellants—Primers, transportation and storage requirements. Small arms ammunition primers shall not be transported or stored except in the original shipping container approved by the federal department of transportation.

Truck or rail transportation of small arms ammunition primers shall be in accordance with the federal regulation of the United States department of transportation.

Not more than twenty-five thousand small arms ammunition primers shall be transported in a private passenger vehicle: *Provided*, That this requirement shall not apply to duly licensed dealers.

Quantities not to exceed ten thousand small arms ammunition primers may be stored in a residence.

Small arms ammunition primers shall be separate from flammable liquids, flammable solids, and oxidizing materials by a fire-resistant wall of one-hour rating or by a distance of twenty-five feet.

Not more than seven hundred fifty thousand small arms ammunition primers shall be stored in any one building except as next provided; no more than one hundred thousand shall be stored in any one pile, and piles shall be separated by at least fifteen feet.

Quantities of small arms ammunition primers in excess of seven hundred fifty thousand shall be stored in magazines in accordance with RCW 70.74.025. [1969 ex.s. c 137 § 31.]

Chapter 70.75 FIRE FIGHTING EQUIPMENT— STANDARDIZATION

Sections

70.75.010	Standard thread specified—Exceptions.
70.75.020	Duties of state fire marshal.
70.75.030	Duties of state fire marshal—Notification of industrial establishments and property owners having equipment.
70.75.040	Sale of nonstandard equipment as misdemeanor— Exceptions.

70.75.900 Severability—1967 c 152.

70.75.010 Standard thread specified—Exceptions. All equipment for fire protection purposes, other than for forest fire fighting, purchased by state and municipal authorities, or any other authorities having charge of public property, shall be equipped with the standard threads designated as the national standard thread as adopted by the American Insurance Association and defined in its pamphlet No. 194, dated 1963: *Provided*, That this section shall not apply to steamer connections on fire hydrants. [1967 c 152 § 1.]

70.75.020 Duties of state fire marshal. The standardization of existing fire protection equipment in this state shall be arranged for and carried out by or under the direction of the state fire marshal. He shall provide the appliances necessary for carrying on this work, shall proceed with such standardization as rapidly as possible, and shall require the completion of such work within a period of five years from June 8, 1967: *Provided*, That the state fire marshal may exempt special purpose fire equipment and existing fire protection equipment from standardization when it is established that such equipment is not essential to the coordination of public fire protection operations. [1967 c 152 § 2.]

State fire marshal: Chapter 48.48 RCW.

70.75.030 Duties of state fire marshal—Notification of industrial establishments and property owners having equipment. The state fire marshal shall notify industrial establishments and property owners having equipment, which may be necessary for fire department use in protecting the property or putting out fire, of any changes necessary to bring their equipment up to the requirements of the standard established by RCW 70.75.020, and shall render such assistance as may be available for converting substandard equipment to meet standard specifications and requirements. [1967 c 152 § 3.]

70.75.040 Sale of nonstandard equipment as misdemeanor—Exceptions. Any person who, without approval of the state fire marshal, sells or offers for sale in Washington any fire hose, fire engine or other equipment for fire protection purposes which is fitted or equipped with other than the standard thread is guilty of a misdemeanor: *Provided*, That fire equipment for special purposes, research, programs, forest fire fighting, or special features of fire protection equipment found appropriate for uniformity within a particular protection area may be specifically exempted from this requirement by order of the state fire marshal. [1967 c 152 § 4.]

70.75.900 Severability—1967 c 152. 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 c 152 § 5.]

Chapter 70.77
STATE FIREWORKS LAW

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Sale or gift of pistol or toy pistol to minors under eighteen years of age is misdemeanor: RCW 26.28.080.

State building code: Chapter 19.27 RCW.

70.77.120 Definitions—To govern chapter. The definitions set forth in this chapter shall govern the construction of this chapter, unless the context otherwise requires. [1961 c 228 § 1.]

70.77.125 Definitions—"Fireworks". "Fireworks" means blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, fire balloons (balloons of a type which have burning material of any kind attached thereto or which require fire underneath to propel them), firecrackers, torpedoes, skyrockets, rockets, Roman candles, daygo bombs, or other fireworks of like construction and any fireworks containing any combustible or explosive substance for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, but does not include toy pistols, toy canes, toy guns, or other similar devices in which paper caps containing not more than twenty-five hundredths grain of explosive compound per cap are used. Nothing herein shall be deemed

to prohibit the use of any explosive or flammable compound, blasting caps and similar items used for industrial purposes. [1961 c 228 § 2.]

70.77.130 Definitions—**"Dangerous fireworks"**. "Dangerous fireworks" includes any of the following:

(1) Pyrotechnics or fireworks containing phosphorous, sulphocyanide, mercury, magnesium, potassium picrate, gallic acid, chlorate of potash and sulfur or chlorate of potash and sugar;

(2) Firecrackers, salutes, and other explosive articles of similar nature;

(3) Blank cartridges;

(4) Skyrockets, rockets, including all similar devices employing any combustible or explosive material and which rise in the air during discharge;

(5) Roman candles, including all devices which discharge balls of fire into the air;

(6) Chasers, including all devices which dart or travel about the surface of the ground during discharge;

(7) Snakes, boa constrictors and snake nests, containing bichloride of mercury;

(8) All articles for pyrotechnic display, which contain gunpowder;

(9) Articles commonly known as son-of-a-gun, devil-on-the-rock, crackit sticks and automatic torpedoes which contain arsenic;

(10) Explosives known as devil-on-the-walk, or any other article of similar character which explodes through means of friction, and all other similar fireworks, unless otherwise designated;

(11) Toy torpedoes of all kinds;

(12) All pyrotechnic devices having a side fuse;

(13) Fire balloons or balloons of any type which have burning material of any kind attached thereto; and

(14) Such other fireworks as may be designated as dangerous by the state fire marshal. [1961 c 228 § 3.]

70.77.135 Definitions—**"Safe and sane fireworks"**.

"Safe and sane fireworks" includes any fireworks not designated as "dangerous fireworks" except that in all cases only end fuses may be used and the total pyrotechnic content of any one piece shall not exceed one hundred grams. [1961 c 228 § 4.]

70.77.140 Definitions—**"Agricultural and wild life fireworks"**. "Agricultural and wild life fireworks" includes fireworks designed or used to prevent damages to crops or unwanted occupancy of areas by animals or birds through the employment of sound or light, or both, whenever such fireworks are so classified by the state fire marshal. [1961 c 228 § 5.]

70.77.145 Definitions—**"Class 1 flammable liquid"**. "Class 1 flammable liquid" includes any liquid whose flash point is one hundred degrees Fahrenheit, or less. [1961 c 228 § 6.]

70.77.150 Definitions—**"Side fuse"**. "Side fuse" means a fuse inserted into a pyrotechnic article or device at a point along its length. [1961 c 228 § 7.]

70.77.155 Definitions—**"End fuse"**. "End fuse" means a fuse inserted into any pyrotechnic article or device at the end as distinguished from the side of such device. [1961 c 228 § 8.]

70.77.160 Definitions—**"Public display of fireworks"**. "Public display of fireworks" means an entertainment feature where the public is admitted or permitted to view the display or discharge of dangerous fireworks. [1961 c 228 § 9.]

70.77.165 Definitions—**"Fire nuisance"**. "Fire nuisance" means anything or any act which increases, or may cause an increase of, the hazard or menace of fire to a greater degree than customarily recognized as normal by persons in the public service of preventing, suppressing, or extinguishing fire; or which may obstruct, delay, or hinder, or may become the cause of any obstruction, delay, or a hindrance to the prevention or extinguishment of fire. [1961 c 228 § 10.]

70.77.170 Definitions—**"License"**. "License" means a nontransferable formal authorization which the state fire marshal is permitted to issue under this chapter to engage in the branch of pyrotechnics specifically designated therein, whether as an importer, exporter or wholesaler, retailer, manufacturer, salesman, pyrotechnic or agricultural operator, or otherwise. [1961 c 228 § 11.]

70.77.175 Definitions—**"Licensee"**. "Licensee" means any person holding a fireworks license in conformance with this chapter. [1961 c 228 § 12.]

70.77.180 Definitions—**"Permit"**. "Permit" means the official permission granted by the local public agency to a licensee for the purposes of establishing and maintaining a place where fireworks are manufactured, constructed, produced, packaged, stored, sold, exchanged, discharged or used. [1961 c 228 § 13.]

70.77.185 Definitions—**"Package"**. "Package" includes any case, container, or receptacle, used for holding fireworks, which is closed, or sealed by tape, cordage, or by any other means. [1961 c 228 § 14.]

70.77.190 Definitions—**"Person"**. "Person" includes any individual, firm, partnership, joint venture, association, concern, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit. [1961 c 228 § 15.]

70.77.195 Definitions—**"Exporter"**. "Exporter" includes any person who sells, consigns or delivers fireworks located within this state for delivery, use, or sale without this state. [1961 c 228 § 16.]

70.77.200 Definitions—**"Importer"**. "Importer" includes any person who for any purpose:

(1) Brings fireworks into this state or causes fireworks to be brought into this state;

(2) Procures the delivery or receives shipments of any fireworks into this state; or

(3) Buys or contracts to buy fireworks for shipment into this state. [1961 c 228 § 17.]

70.77.205 Definitions——"Manufacturer". "Manufacturer" includes any person who manufactures, makes, constructs, fabricates, or produces any fireworks article or device but does not include persons who assemble or fabricate sets or mechanical pieces in public displays of fireworks. [1961 c 228 § 18.]

70.77.210 Definitions——"Wholesaler". "Wholesaler" includes any person, other than an importer, exporter, or manufacturer selling only to wholesalers who sells fireworks to a retailer or any other person for resale and shall also include any person who sells dangerous fireworks to public display permittees. [1961 c 228 § 19.]

70.77.215 Definitions——"Retailer". "Retailer" includes any person who, at a fixed location or place of business, sells, transfers, or gives fireworks to a consumer or user. [1961 c 228 § 20.]

70.77.220 Definitions——"Salesman". "Salesman" includes any person who, as an employee of a manufacturer or wholesaler, solicits, accepts, or receives an order for fireworks from a licensee or permittee. [1961 c 228 § 21.]

70.77.225 Definitions——"Sell", "transfer". "Sell" or "transfer" includes contracts or orders for sales or transfers. [1961 c 228 § 22.]

70.77.230 Definitions——"Pyrotechnic operator". "Pyrotechnic operator" includes any individual who by experience and training has demonstrated the required skill and ability for safely setting up and discharging public displays of dangerous fireworks. [1961 c 228 § 23.]

70.77.235 Definitions——"Within this state". "Within this state" means within all territory within the boundaries of this state. [1961 c 228 § 24.]

70.77.240 Definitions——"Without this state". "Without this state" means all territory without the boundaries of this state. [1961 c 228 § 25.]

70.77.245 Definitions——"The State Fire Marshal's Seal of Registration". "The State Fire Marshal's Seal of Registration" means the seal of registration of the state fire marshal and consists of a series of concentric circles lettered as follows:

Outer circle
upper half: "REGISTERED"
lower half: "FIREWORKS"

Inner circle
upper half: "STATE OF WASHINGTON"
lower half: "STATE FIRE MARSHAL"

In the center shall appear a facsimile of the official state tree, the western hemlock.

Appended below the outer circle and in a central position shall be a box provided for displaying the registration number assigned by the state fire marshal to any registered classified fireworks manufacturer, importer, wholesaler, retailer, or other person or device governed by this chapter. [1961 c 228 § 26.]

70.77.250 State fire marshal to enforce and administer—Powers and duties. The state fire marshal shall enforce and administer this chapter and shall have the following powers and duties:

(1) He shall appoint such deputies and employees as may be necessary and required to carry out the provisions of this chapter;

(2) He may prescribe such rules and regulations relating to fireworks as may be necessary for the protection of life and property, and shall adopt reasonable rules and regulations not inconsistent with the provisions of this chapter, for the granting of permits for, and the presentation of, public displays of fireworks;

(3) He may adopt reasonable regulations providing for:

(a) The granting of licenses and permits for amateur research or experiments with experimental or model rockets or missiles, or for the production, transportation, or firing of experimental or model rockets or missiles.

(b) The granting of licenses and permits for the use of pyrotechnics by television, theatrical, or motion picture special effects personnel.

The provisions of this subsection do not apply to research or experiments with rockets or missiles, or the production, transportation, or firing of rockets or missiles by the department of defense of the United States, or by any agency or organization acting pursuant to a contract which it has with the department of defense for the development or production of rockets or missiles.

(4) Subject to such restrictions as are deemed necessary he may exempt from the provisions of this chapter specific pyrotechnic items for commercial, industrial, and agricultural uses. [1961 c 228 § 27.]

70.77.255 Acts prohibited without permit. No person, without securing a permit, shall do any of the following:

(1) Manufacture, import, export, possess, or sell any fireworks at wholesale or retail for any use, including agricultural purposes or wild life control;

(2) Discharge dangerous fireworks at any place;

(3) Make a public display of fireworks;

(4) Transport fireworks, except as a public carrier. [1961 c 228 § 28.]

70.77.260 Application for permit. Any adult person or other group desiring to do any act mentioned in RCW 70.77.255 shall first make written application for a permit to the chief of the fire department or the chief fire prevention officer of the city or county, or to such other person as may be designated by the governing body of the city or county, or in the event there be no such officer or person appointed within the area, to the state fire marshal or his appropriate deputy. Applications for permits for public display of fireworks shall be made in

writing at least ten days in advance of the proposed display. [1961 c 228 § 29.]

70.77.265 Investigation, report on permit application. It shall be the duty of the officer to whom the application for a permit was made to make an investigation and submit a report of his findings and his recommendation for or against the issuance of the permit, together with his reasons therefor, to the governing body of the city or county. [1961 c 228 § 30.]

70.77.270 Governing body may grant or deny permit—Conditions. The governing body shall have power in its discretion to grant or deny the application, subject to such reasonable conditions, if any, as it shall prescribe. [1961 c 228 § 31.]

70.77.275 License required prior to issuance of permit. A permit shall not be issued unless the person applying for the permit has first obtained a license from the state fire marshal, as provided in this chapter, to do the particular act or acts described in the permit. [1961 c 228 § 32.]

Valid license prerequisite to grant of permit: RCW 70.77.300.

70.77.280 Public display permit—Investigation—Grant, denial—Conditions. It shall be the duty of the officer to whom the application for a permit for a public display of fireworks is made to make an investigation as to whether such a display as proposed will be of such a character and will be so located that it may be hazardous to property or dangerous to any person, and he shall in the exercise of reasonable discretion grant or deny the application, subject to such reasonable conditions, if any, as he may prescribe. [1961 c 228 § 33.]

70.77.285 Public display permit—Submission of license—Employee compensation insurance—Bond or insurance for liability. The applicant for a permit for a public display of fireworks shall at the time of application submit his license for inspection and furnish proof that he carries compensation insurance for his employees as provided by the laws of this state. He shall file with the officer to whom the application is made, a bond issued by an authorized surety company to be approved by such officer, conditioned upon the applicant's payment of all damages to persons or property which shall or may result from or be caused by such public display of fireworks, or any negligence on the part of the applicant, or his or its agents, servants, employees, or subcontractors in the presentation thereof, or a certificate of insurance evidencing the carrying of appropriate public liability insurance for the benefit of the person named therein as assured, as evidence of ability to respond in damages in at least such amount, said policies to be similarly approved. [1961 c 228 § 34.]

Amount of bond or insurance: RCW 70.77.295.

70.77.290 Public display permit—Granted for exclusive purpose—Nontransferable. If a permit for

the public display of fireworks is granted, the sale, possession and use of fireworks for the public display is lawful for that purpose only. No such permit granted shall be transferable. [1961 c 228 § 35.]

70.77.295 Public display permit—Amount of bond and insurance. In the case of an application for a permit for the public display of fireworks, the amount of such a surety bond shall be not less than ten thousand dollars, and the amount of such insurance shall be not less than twenty thousand dollars. [1961 c 228 § 36.]

Bond or insurance required: RCW 70.77.285.

70.77.300 Valid license prerequisite for permit. No permit shall be granted under this chapter for any activity unless the person applying for the permit has obtained a valid license, if a license is required under this chapter for such activity. [1961 c 228 § 37.]

License required prior to issuance of permit: RCW 70.77.275.

70.77.305 Fire marshal to issue and renew licenses. The state fire marshal shall have the power to issue and renew licenses for the manufacture, importation, exportation, sale, use and transportation of all fireworks in this state. [1961 c 228 § 38.]

70.77.310 Certain sales and uses exempt from licensing. No license shall be required for the sale at retail or for the use and discharge of agricultural and wild life fireworks. [1961 c 228 § 39.]

70.77.315 Application for license. Any person who desires to engage in the manufacture, importation, sale, or use of fireworks shall first make a written verified application to the state fire marshal on forms provided by him. Such application shall be accompanied by the annual license fee as prescribed in this chapter. [1961 c 228 § 40.]

70.77.320 Application for license to be signed. The application for a license shall be signed by the applicant. If application is made by a partnership, it shall be signed by each partner of the partnership, and if application is made by a corporation, it shall be signed by an officer of the corporation and bear the seal of the corporation. [1961 c 228 § 41.]

70.77.325 Annual application for renewal of license. Application for renewal of a license shall be made annually by every person holding an existing license and accompanied by the annual license fee as prescribed in this chapter. [1961 c 228 § 42.]

70.77.330 License to engage in particular act to be issued if not contrary to public safety or welfare—Transportation of fireworks authorized. If the state fire marshal finds that the granting or renewing of such license would not be contrary to public safety or welfare, he shall issue or renew a license authorizing the applicant to engage in the particular act or acts upon the payment of the license fee specified in this chapter.

Licensees may transport the class of fireworks for which they hold a valid license. [1961 c 228 § 43.]

70.77.335 License authorizes activities of registered salesmen, employees. The authorization to engage in the particular act or acts conferred by a license to a person shall extend to salesmen and other employees of such person who are registered with the state fire marshal. [1961 c 228 § 44.]

70.77.340 Annual license fees. The original and annual renewal license fee shall be as follows:

Manufacturer	\$ 500.00
Importer and/or exporter	100.00
Wholesaler	1,000.00
Retailer (for each separate retail outlet)	10.00
Public display for dangerous fireworks . . .	10.00
Pyrotechnic operator for dangerous fireworks	5.00

[1961 c 228 § 45.]

70.77.345 Duration of licenses. Beginning January 1, 1962, the original and annual renewal license fee shall be for the calendar year from January 1st to December 31st or for the remaining portion thereof. [1961 c 228 § 46.]

70.77.350 Delinquent license fee. A penalty fee equal to fifty percent of the required original and annual renewal license fee shall be added to such fee in all cases where the fee for a renewal of a license is not paid on or before April 1st. [1961 c 228 § 47.]

70.77.355 General license for public display—Surety bond—Filing with legislative body. Notwithstanding any of the other provisions of this chapter relating to public liability insurance and bonds, any adult individual, concern, firm, corporation, or copartnership may secure a general license for the public display of fireworks within the state of Washington subject to the provisions of this chapter relative to the securing of local permits for the public display of fireworks in any city or county, except that in lieu of filing the bonds or certificate of public liability insurance as required in RCW 70.77.285, a surety bond similarly conditioned in the amount of twenty-five thousand dollars or a certificate evidencing public liability insurance in a like amount shall be filed with the state fire marshal. The state fire marshal shall have the authority to issue such licenses, subject to such reasonable rules and regulations which he may adopt, not inconsistent with the provisions of this chapter. A certificate evidencing such general license, when so obtained, shall be filed with the legislative body or officer granting a permit for the public display of fireworks prior to the issuance thereof. [1961 c 228 § 48.]

70.77.360 Denial of license if contrary to public safety or welfare. If the state fire marshal finds that the granting or renewing of a license would be contrary to

the public safety or welfare, he may deny the application for a license or a renewal of a license. [1961 c 228 § 49.]

70.77.365 Denial of license for failure to meet qualifications or conditions. A written report of the state fire marshal, any of his deputies or salaried assistants, or the chief of any city or county fire department or fire protection district or their authorized representatives, disclosing that the applicant for a license or for a renewal of a license, or the premises for which a license is to apply, do not meet the qualifications or conditions for a license shall constitute grounds for the denial of any application for a license or the renewal of a license. [1961 c 228 § 50.]

70.77.370 Hearing on denial of license. Any applicant who has been denied a license or a renewal of a license shall be entitled to a hearing in accordance with the provisions of chapter 48.04 RCW. [1961 c 228 § 51.]

70.77.375 Mandatory revocation of license. The state fire marshal, upon reasonable opportunity to be heard, shall revoke any license issued pursuant to this chapter, if he finds that:

- (1) A licensee has failed to pay the original and annual renewal license fee provided in this chapter;
- (2) The licensee has violated any provisions of this chapter or any rule or regulations made by the state fire marshal under and with the authority of this chapter;
- (3) The licensee has created or caused a fire nuisance;
- (4) Any licensee has failed or refused to file any required reports; or
- (5) Any fact or condition exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the state fire marshal in refusing originally to issue such license. [1961 c 228 § 52.]

70.77.380 Classification of fireworks. All fireworks, before being imported, exported, sold or offered for sale, shall be classified by the state fire marshal, in accordance with the provisions of this chapter, as being either dangerous fireworks, safe and sane fireworks, or agriculture and wild life fireworks. [1961 c 228 § 53.]

70.77.385 Classification, registration prior to sale, etc.—Labels—Shipments to be prepaid. No fireworks items shall be sold, offered for sale, discharged, or transported within the state without first having been classified and registered by the state fire marshal. Any licensee desiring to have safe and sane fireworks articles classified and registered by the state fire marshal shall submit to his office not less than three live samples of each item for which classification is desired together with a notarized chemical analysis of the materials of such samples. Each item must be labeled as for sale and distribution together with firing instructions. Every fireworks article which has not been submitted for classification or which does not bear the classification label of

the state fire marshal shall be considered to be dangerous fireworks. All shipments shall be prepaid. Classification shall be limited to the products of licensed manufacturers excepting only fireworks articles classified by this chapter as dangerous fireworks intended and used for public fireworks displays which may be classified for licensed manufacturers, importers and/or wholesalers. [1961 c 228 § 54.]

70.77.390 Labeling, stamping dangerous fireworks—Marking safe and sane fireworks. The manufacturer, importer or wholesaler shall stamp or label each case or carton of dangerous fireworks offered for sale, sold, consigned or delivered within this state for sale or use within this state as "dangerous fireworks". Each package of safe and sane fireworks shall be marked as "safe and sane fireworks" and shall bear the state fire marshal's classification label and license number. [1961 c 228 § 55.]

70.77.395 Dates safe and sane fireworks may be sold. No safe and sane fireworks shall be sold or offered for sale at retail within this state except from twelve o'clock noon on the twenty-eighth of June to twelve o'clock noon on the sixth of July of each year. [1961 c 228 § 56.]

70.77.400 Protective caps or enclosed packages required for safe and sane fireworks. No safe and sane fireworks shall be sold or offered for sale at retail unless the fuses or other igniting devices are protected by approved protective caps or each item or group of items is enclosed or sealed in a package bearing the state fire marshal's seal of registration upon which the wholesaler's license number appears. [1961 c 228 § 57.]

70.77.405 Authorized sales of toy pistols, canes, guns, etc. Toy pistols, toy canes, toy guns, or other similar devices in which paper caps containing not more than twenty-five hundredths grain of explosive compound for each cap is used may be sold at all times unless prohibited by local ordinance. [1961 c 228 § 58.]

70.77.410 Public displays not to be hazardous. All public displays of fireworks shall be of such a character and so located, discharged, or fired as not to be hazardous or dangerous to persons or property. [1961 c 228 § 59.]

70.77.415 Supervision of public displays. Every public display of fireworks shall be handled or supervised by a competent and experienced pyrotechnic operator approved by the chief of the fire department or the chief fire prevention officer of the city or county in which the display is to be held, or by the state fire marshal or his authorized deputy therefor, if there be no chief of the fire department or chief fire prevention officer in the area. [1961 c 228 § 60.]

70.77.420 Storage permit required. It shall be unlawful for any person to store fireworks of any class without first having made a written application for and received a permit for such storage to the chief of the fire

department or to the chief fire prevention officer of the city or county in which the storage is to be made, or to the state fire marshal, or to such authorized deputy as may be designated for such purpose at least ten days prior to the date of the proposed storage. If there is no chief of the fire department or chief fire prevention officer in the area, it shall be the duty of the officer to whom the application for a storage permit is made to make an investigation as to whether such storage as proposed will be of such a nature and character and will be so located as to constitute a hazard to property or be dangerous to any person, and he shall in the exercise of reasonable discretion grant or deny the application, subject to such reasonable conditions, if any, as he may prescribe. [1961 c 228 § 61.]

70.77.425 Approved storage facilities required. It shall be unlawful for any person to store unsold stocks of safe and sane fireworks remaining unsold after the lawful period of sale as provided in his permit except in such places of storage as the local officer issuing the permit shall approve. Unsold stocks of safe and sane fireworks remaining after the authorized retail sales period from twelve o'clock noon on June 28th to twelve o'clock noon on July 6th shall be returned on or before July 31st of the same year to the approved storage facilities of a licensed fireworks wholesaler, to a magazine or storage place approved by the chief of any city or county fire department or fire protection district, or to a place approved by the state fire marshal. [1961 c 228 § 62.]

70.77.430 Sale of stock after revocation, surrender, failure to renew license. Following the revocation or voluntary surrender of, or failure to renew his license, any person in lawful possession of a lawfully acquired stock of fireworks may sell such fireworks only under supervision of the state fire marshal and in such a manner as he shall by rule provide and solely to persons who are authorized to buy, possess, sell, or use such fireworks. [1961 c 228 § 63.]

70.77.435 Seizure of fireworks. Any fireworks not bearing the seal of approval of the state fire marshal which are illegally sold, offered for sale, used, discharged, possessed or transported in violation of the provisions of this chapter or the rules or regulations of the state fire marshal shall be subject to seizure by the state fire marshal or any deputy state fire marshal. Any fireworks seized under this section may be disposed of by the state fire marshal by summary destruction at any time subsequent to thirty days from such seizure or ten days from the final termination of proceedings under the provisions of RCW 70.77.440, whichever is later. [1961 c 228 § 64.]

70.77.440 Seizure of fireworks—Petition for return—Hearing—Decision—Judicial action for recovery. Any person whose fireworks are seized under the provisions of RCW 70.77.435 may within ten days after such seizure petition the state fire marshal to return the fireworks seized upon the ground that such

fireworks were illegally or erroneously seized. Any petition filed hereunder shall be considered by the state fire marshal within fifteen days after filing and an oral hearing granted the petitioner, if requested. Notice of the decision of the state fire marshal shall be served upon the petitioner. The state fire marshal may order the fireworks seized under this chapter disposed of or returned to the petitioner if illegally or erroneously seized. The determination of the state fire marshal is final unless within sixty days an action is commenced in a court of competent jurisdiction in the state of Washington for the recovery of the fireworks seized by the state fire marshal. [1961 c 228 § 65.]

70.77.445 Removal of vehicle unlawfully used—Notice—Garageman's lien—Sale when unclaimed. The state fire marshal, and his deputies or salaried assistants, the chief of any city or county fire department or fire protection district, or any of their authorized representatives may remove any vehicle which is used unlawfully to transport fireworks or in which any fireworks are unlawfully kept, deposited or concealed, to the nearest garage or other place of safety or to a garage designated or maintained by the state fire marshal.

In the event that the state fire marshal, or any of his deputies or salaried assistants, the chief of any city or county fire department or fire protection district, or any of their authorized representatives, removes any such vehicle, he shall give the notices required of officers under RCW 46.52.110, and the keeper of any garage in which any such vehicle is stored may have a lien thereon for his compensation for towage and for caring for and keeping safe such vehicle.

On the expiration of notice given, unclaimed vehicles shall be sold pursuant to RCW 46.52.110 and the proceeds disposed of as provided therein. [1961 c 228 § 66.]

70.77.450 Examination, inspection of books and premises. The state fire marshal may make an examination of the books and records of any licensee, or other person relative to fireworks, and may visit and inspect the premises of any licensee he may deem at any time necessary for the purpose of enforcing the provisions of this chapter. The licensee, owner, lessee, manager, or operator of any such building or premises shall permit the state fire marshal, his deputies, his salaried assistants and the chief of any city or county fire department or fire protection district and their authorized representatives to enter and inspect the premises at the time and for the purpose stated in this section. [1961 c 228 § 67.]

70.77.455 Licensees to maintain and make available to state fire marshal complete records. All licensees shall maintain and make available to the state fire marshal full and complete records showing all production, imports, exports, purchases, sales and consumption of fireworks items by kind and class whether dangerous fireworks, safe and sane fireworks, or agricultural and wild life fireworks. [1961 c 228 § 68.]

70.77.460 Reports, payments deemed made when filed or paid or date mailed. When reports on fireworks transactions or the payments of license fees or penalties are required to be made on or by specified dates, they shall be deemed to have been made at the time they are filed with or paid to the state fire marshal or, if sent by mail, on the date shown by the United States postmark on the envelope containing the report or payment. [1961 c 228 § 69.]

70.77.465 Additional and supplemental reports. In addition to any other reports required under this chapter, the state fire marshal may, by rule or otherwise, require additional, other, or supplemental reports from licensees and other persons and prescribe the form, including verification, of the information to be given when filing such additional, other or supplemental reports. [1961 c 228 § 70.]

70.77.470 Bills of lading, invoices to bear license numbers. Each bill of lading, manifest, and invoice issued to cover sales or shipments of fireworks shall bear the license number of both the seller or shipper and buyer or receiver. [1961 c 228 § 71.]

70.77.475 Unclassified fireworks—Sale, possession, etc., prohibited. The sale, transportation, possession, or discharge of unclassified fireworks is prohibited. [1961 c 228 § 72.]

70.77.480 Prohibited transfers of dangerous fireworks. The transfer of dangerous fireworks ownership whether by sale at wholesale or retail, by gift or other means of conveyance of title or the delivery of any dangerous fireworks to any person in the state who does not possess and present to the seller for inspection at the time of transfer a valid license and permit, where such permit is required to purchase, possess, transport, or use dangerous fireworks, is prohibited. [1961 c 228 § 73.]

70.77.485 Unlawful possession—Penalty. The unlawful possession of any class or kind of fireworks in violation of the provisions of this chapter shall be a misdemeanor. [1961 c 228 § 74.]

70.77.490 Possession of unmarked fireworks evidence of violation. Possession of fireworks unmarked with the manufacturer's license number and the state fire marshal's classification as required by this chapter shall be prima facie evidence of a violation of this chapter. [1961 c 228 § 75.]

70.77.495 Forestry permit to set off fireworks in forest, brush, fallow, etc. Nothing in this chapter shall be construed as permitting any person to set off fireworks of any kind in forest, fallows, grass or brush covered land, either on his own land or the property of another, between April 15th and December 1st of any year, unless it is done under a written permit from the supervisor of forestry or his duly authorized agent, and in strict accordance with the terms of the permit and any other applicable law. [1961 c 228 § 76.]

70.77.500 Authorized delivery, transportation of dangerous or agricultural and wild life fireworks. No person shall transport, convey, or deliver any dangerous fireworks or agricultural and wild life fireworks except for licensed permittees making delivery to:

- (1) Other licensed permittees;
- (2) Locations of public displays of fireworks authorized under this part;
- (3) Distributors outside this state; or
- (4) Agricultural or wild life permittees. [1961 c 228 § 77.]

70.77.505 Sale, discharge where flammables or motor vehicles stored. No person shall sell or discharge any fireworks in any public garage or public oil station or on any premises where gasoline or other class 1 flammable liquids are stored or dispensed or where more than four motor vehicles are stored. [1961 c 228 § 78.]

70.77.510 Sales or transfers of dangerous fireworks only to permittee. No person shall sell or transfer any dangerous fireworks to any person who is not a fireworks permittee as provided for by this chapter. [1961 c 228 § 79.]

70.77.515 Sale, transfer of safe and sane fireworks only at licensed place of business. No person shall sell or transfer any safe and sane fireworks to a consumer or user thereof other than at a fixed place of business of a retailer for which a license and permit have been issued. [1961 c 228 § 80.]

70.77.520 Fire nuisance where fireworks kept prohibited. No person shall allow any rubbish to accumulate in any premises when any fireworks are stored or sold or permit a fire nuisance to exist. [1961 c 228 § 81.]

70.77.525 Nonprohibited acts—Out-of-state shipments, wholesale sales, demonstrations, athletic events, public displays, etc. This chapter does not prohibit any manufacturer, wholesaler, dealer or jobber, having a license and a permit secured under the provisions of this chapter, from:

- (1) Manufacturing or selling any kind of fireworks for direct shipment out of this state;
- (2) Manufacturing or selling at wholesale any dangerous fireworks to persons holding permits hereunder;
- (3) Selling blank cartridges for use by persons for bona fide ceremonial purposes, athletic, sports events, or military ceremonies or demonstrations; or
- (4) Selling dangerous fireworks to persons having a license and a permit for public displays of fireworks. [1961 c 228 § 82.]

70.77.530 Nonprohibited acts—Signal purposes, forest protection. This chapter does not prohibit the use of torpedoes, flares, or fuses by motor vehicles, railroads, or other transportation agencies for signal purposes or illumination or for use in forest protection activities. [1961 c 228 § 83.]

70.77.535 Nonprohibited acts—Movies, productions, shows. This chapter does not prohibit the assembling, compounding, use and display of fireworks of whatever nature by any person engaged in the production of motion pictures, theatricals, or operas when such use and display is a necessary part of the production and such person possesses a valid permit to purchase, possess, transport or use dangerous fireworks. [1961 c 228 § 84.]

70.77.540 Penalty. Any person violating any of the provisions of this chapter or any rules or regulations issued thereunder is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not exceeding one year, or by both such fine and imprisonment. [1961 c 228 § 85.]

70.77.545 Violation a separate, continuing offense. A person is guilty of a separate offense for each day during which he commits, continues, or permits a violation of any provision of, or any order, rule, or regulation made pursuant to this chapter. [1961 c 228 § 86.]

70.77.550 Short title. This chapter shall be known and may be cited as the state fireworks law. [1961 c 228 § 87.]

70.77.555 Limitation on local permit fee. A local public agency shall not charge more than ten dollars as a permit fee for any one year. [1961 c 228 § 88.]

70.77.560 Prior rules continued until modified. The rules and regulations adopted by the state fire marshal relating to fireworks and in existence on January 1, 1962 shall continue thereafter to be in effect as rules and regulations of the state fire marshal until amended or repealed pursuant to the provisions of this chapter. [1961 c 228 § 89.]

70.77.900 Effective date—1961 c 228. This act shall take effect on January 1, 1962. [1961 c 228 § 90.]

70.77.910 Severability—1961 c 228. 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. [1961 c 228 § 91.]

Chapter 70.79

BOILERS AND UNFIRED PRESSURE VESSELS

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State building code: Chapter 19.27 RCW.

70.79.010 Board of boiler rules—Members—Terms—Meetings. There is hereby created within this state a board of boiler rules, which shall hereafter be referred to as the board, consisting of five members who shall be appointed to the board by the governor, one for a term of one year, one for a term of two years, one for a term of three years, and two for a term of four years. At the expiration of their respective terms of office, they, or their successors identifiable with the same interests respectively as hereinafter provided, shall be appointed for terms of four years each. The governor may at any time remove any member of the board for inefficiency or neglect of duty in office. Upon the death or incapacity of any member the governor shall fill the vacancy for the remainder of the vacated term with a representative of the same interests with which his predecessor was identified. Of these five appointed members, one shall be representative of owners and users of boilers and unfired pressure vessels within the state, one shall be representative of the boiler or unfired pressure vessel manufacturers within the state, one shall be a representative of a boiler insurance company licensed to do business within the state, one shall be a mechanical engineer on the faculty of a recognized engineering college or a graduate mechanical engineer having equivalent experience, and one shall be representative of the boilermakers or practical steam operating engineers. The board shall elect one of its members to serve as chairman and, at the call of the chairman, the board shall meet at least four times each year at the state capitol or other place designated by the board. [1951 c 32 § 1.]

70.79.020 Travel expense allowance. The members of the board shall serve without salary and shall receive travel expenses incurred while in the performance of their duties as members of the board, in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 159; 1951 c 32 § 2.]

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

70.79.030 Duties of board—Make definitions, rules and regulations—Boiler construction code. The board shall formulate definitions, rules, and regulations for the safe and proper construction, installation, repair, use, and operation of boilers and for the safe and proper construction, installation, and repair of unfired pressure vessels in this state. The definitions, rules, and regulations so formulated shall be based upon, and, at all times, follow the generally accepted nationwide engineering standards, formulae, and practices established and pertaining to boiler and unfired pressure vessel construction and safety, and the board may by resolution adopt an existing published codification thereof, known as "The Boiler Construction Code of the American Society of Mechanical Engineers", with the amendments and interpretations thereto made and approved by the council of the society, and may likewise adopt the amendments and interpretations subsequently made and published by the same authority; and when so adopted the same shall be deemed incorporated into, and to constitute a part or the whole of the definitions, rules, and regulations of the board. Amendments and interpretations to the code so adopted shall be adopted immediately upon being promulgated, to the end that the definitions, rules, and regulations shall at all times follow the generally accepted nationwide engineering standards: *Provided, however,* That all rules and regulations promulgated by the board, including any or all of the boiler construction code of the American society of mechanical engineers with amendments and interpretations thereof, shall be adopted in compliance with the Administrative Procedure Act, chapter 34.04 RCW, as now or hereafter amended. All boilers and unfired pressure vessels subject to the jurisdiction of the board, which have been constructed or installed in accordance with the code of the American society of mechanical engineers shall be prima facie evidence of compliance with those provisions of this chapter and the rules of the board. [1972 ex.s. c 86 § 1; 1951 c 32 § 3.]

70.79.040 Rules and regulations—Scope. The board shall promulgate rules and regulations for the safe and proper installation, repair, use and operation of boilers, and for the safe and proper installation and repair of unfired pressure vessels which were in use or installed ready for use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations became effective, or during the twelve months period immediately thereafter. [1951 c 32 § 4.]

70.79.050 Rules and regulations—Effect. (1) The rules and regulations formulated by the board shall have the force and effect of law, except that the rules applying to the construction of new boilers and unfired pressure vessels shall not be construed to prevent the installation thereof until twelve months after their approval by the director of the department of labor and industries.

(2) Subsequent amendments to the rules and regulations adopted by the board shall be permissive immediately and shall become mandatory twelve months after such approval. [1951 c 32 § 5.]

70.79.060 Construction, installation must conform to rules. No power boiler, low pressure boiler, or unfired pressure vessel which does not conform to the rules and regulations formulated by the board governing new construction and installation shall be installed and operated in this state after twelve months from the date upon which the first rules and regulations under this chapter pertaining to new construction and installation shall have become effective, unless the boiler or unfired pressure vessel is of special design or construction, and is not covered by the rules and regulations, nor is in any way inconsistent with such rules and regulations, in which case a special installation and operating permit may at its discretion be granted by the board. [1951 c 32 § 6.]

70.79.070 Existing installations—Conformance required. (1) All boilers and unfired pressure vessels which were in use, or installed ready for use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations became effective, or during the twelve months period immediately thereafter, shall be made to conform to the rules and regulations of the board governing existing installations, and the formulae prescribed therein shall be used in determining the maximum allowable working pressure for such boilers and unfired pressure vessels.

(2) This chapter shall not be construed as in any way preventing the use or sale of boilers or unfired vessels as referred to in subsection (1) of this section, provided they have been made to conform to the rules and regulations of the board governing existing installations, and provided, further, they have not been found upon inspection to be in an unsafe condition. [1951 c 32 § 7.]

70.79.080 Exemptions from chapter. This chapter shall not apply to the following boilers, unfired pressure vessels and domestic hot water tanks:

(1) Boilers and unfired pressure vessels under federal regulation or operated by any railroad subject to the provisions of the interstate commerce act;

(2) Unfired pressure vessels meeting the requirements of the interstate commerce commission for shipment of liquids or gases under pressure;

(3) Air tanks located on vehicles operating under the rules of other state authorities and used for carrying passengers, or freight;

(4) Air tanks installed on the right of way of railroads and used directly in the operation of trains;

(5) Unfired pressure vessels having a volume of five cubic feet or less when not located in places of public assembly;

(6) Unfired pressure vessels designed for a pressure not exceeding fifteen pounds per square inch gauge when not located in place of public assembly;

(7) Tanks used in connection with heating water for domestic and/or residential purposes;

(8) Boilers and unfired pressure vessels in cities having ordinances which are enforced and which have requirements equal to or higher than those provided for under this chapter, covering the installation, operation, maintenance and inspection of boilers and unfired pressure vessels. [1951 c 32 § 8.]

70.79.090 Exemptions from certain provisions. The following boilers and unfired pressure vessels shall be exempt from the requirements of RCW 70.79.220, and 70.79.240 through *70.79.340:

(1) Boilers or unfired pressure vessels located on farms and used solely for agricultural purposes;

(2) Steam boilers used exclusively for heating purposes carrying a pressure of not more than fifteen pounds per square inch gauge and which are located in private residences or in apartment houses of less than six families;

(3) Hot water heating boilers carrying a pressure of not more than thirty pounds per square inch and which are located in private residences or in apartment houses of less than six families;

(4) Approved pressure vessels (hot water heaters listed by a nationally recognized testing agency), with approved safety devices including a pressure relief valve, with a nominal water containing capacity of one hundred twenty gallons or less having a heat input of two hundred thousand b.t.u.'s per hour or less, used for hot water supply at pressure of one hundred sixty pounds per square inch or less, and at temperatures of two hundred degrees Fahrenheit or less: *Provided, however,* That such pressure vessels are not installed in schools, child care centers, public and private hospitals, nursing and boarding homes, churches, public buildings owned or leased and maintained by the state or any political subdivision thereof, and assembly halls;

(5) Unfired pressure vessels containing only water under pressure for domestic supply purposes, including those containing air, the compression of which serves only as a cushion or airlift pumping systems, when located in private residences or in apartment houses of less than six families;

(6) Unfired pressure vessels containing liquified petroleum gases. [1972 ex.s. c 86 § 2; 1951 c 32 § 9.]

*Reviser's note: RCW "70.79.340" was repealed by 1970 ex.s. c 21 § 3.

70.79.100 Chief inspector—Qualifications—Appointment, removal. (1) Within sixty days after the effective date of this chapter, and at any time thereafter that the office of the chief inspector may become vacant, the director of the department of labor and industries shall appoint a chief inspector who shall have had at the

time of such appointment not less than ten years practical experience in the construction, maintenance, repair, or operation of high pressure boilers and unfired pressure vessels, as a mechanical engineer, steam engineer, boilermaker, or boiler inspector, and who shall have passed the same kind of examination as that prescribed for deputy or special inspectors in RCW 70.79.170 to be chief inspector until his successor shall have been appointed and qualified. Such chief inspector may be removed for cause after due investigation by the board and its recommendation to the director of the department of labor and industries. [1951 c 32 § 10.]

70.79.110 Chief inspector—Duties in general. The chief inspector, if authorized by the director of the department of labor and industries is hereby charged, directed and empowered:

(1) To cause the prosecution of all violators of the provisions of this chapter;

(2) To issue, or to suspend, or revoke for cause, inspection certificates as provided for in RCW 70.79.290;

(3) To take action necessary for the enforcement of the laws of the state governing the use of boilers and unfired pressure vessels and of the rules and regulations of the board;

(4) To keep a complete record of the type, dimensions, maximum allowable working pressure, age, condition, location, and date of the last recorded internal inspection of all boilers and unfired pressure vessels to which this chapter applies;

(5) To publish and distribute, among manufacturers and others requesting them, copies of the rules and regulations adopted by the board. [1951 c 32 § 11.]

70.79.120 Deputy inspectors—Qualifications—Employment. The chief inspector shall employ deputy inspectors who shall be responsible to the chief inspector and who shall have had at time of appointment not less than five years practical experience in the construction, maintenance, repair, or operation of high pressure boilers and unfired pressure vessels as a mechanical engineer, steam engineer, boilermaker, or boiler inspector, and who shall have passed the examination provided for in RCW 70.79.170. [1951 c 32 § 12.]

70.79.130 Special inspectors—Qualifications—Commission. In addition to the deputy boiler inspectors authorized by RCW 70.79.120, the chief inspector shall, upon the request of any company authorized to insure against loss from explosion of boilers and unfired pressure vessels in this state, or upon the request of any company operating unfired pressure vessels in this state, issue to any inspectors of said company commissions as special inspectors, provided that each such inspector before receiving his commission shall satisfactorily pass the examination provided for in RCW 70.79.170, or, in lieu of such examination, shall hold a certificate of competency as an inspector of boilers and unfired pressure vessels for a state that has a standard of examination substantially equal to that of this state or a certificate as an inspector of boilers from the national board of boiler

and pressure vessel inspectors. A commission as a special inspector for a company operating unfired pressure vessels in this state shall be issued only if, in addition to meeting the requirements stated herein, the inspector is continuously employed by the company for the purpose of making inspections of unfired pressure vessels used, or to be used, by such company. [1951 c 32 § 13.]

70.79.140 Special inspectors—Compensation—Continuance of commission. Special inspectors shall receive no salary from, nor shall any of their expenses be paid by the state, and the continuance of a special inspector's commission shall be conditioned upon his continuing in the employ of a boiler insurance company duly authorized as aforesaid or upon continuing in the employ of a company operating unfired pressure vessels in this state and upon his maintenance of the standards imposed by this chapter. [1951 c 32 § 14.]

70.79.150 Special inspectors—Inspections—Exempts from inspection fees. Special inspectors shall inspect all boilers and unfired pressure vessels insured or all unfired pressure vessels operated by their respective companies and, when so inspected, the owners and users of such insured boilers and unfired pressure vessels shall be exempt from the payment to the state of the inspection fees as provided for in RCW 70.79.330. [1951 c 32 § 15.]

70.79.160 Report of inspection by special inspector—Filing. Each company employing special inspectors shall within thirty days following each internal boiler or unfired pressure vessel inspection made by such inspectors, file a report of such inspection with the chief inspector upon appropriate forms as promulgated by the American society of mechanical engineers. Reports of external inspections shall not be required except when such inspections disclose that the boiler or unfired pressure vessel is in dangerous condition. [1951 c 32 § 16.]

70.79.170 Examinations for inspector's appointment or commission—Reexamination. Examinations for chief, deputy, or special inspectors shall be in writing and shall be held by the board, or by at least two members of the board. Such examinations shall be confined to questions the answers to which will aid in determining the fitness and competency of the applicant for the intended service. In case an applicant for an inspector's appointment or commission fails to pass the examination, he may appeal to the board for another examination which shall be given by the board within ninety days. The record of an applicant's examination shall be accessible to said applicant and his employer. [1951 c 32 § 18.]

70.79.180 Suspension, revocation of inspector's commission—Grounds—Reinstatement. A commission may be suspended or revoked after due investigation and recommendation by the board to the director of the department of labor and industries for the incompetence or untrustworthiness of the holder thereof, or for wilful falsification of any matter or statement contained in his

application or in a report of any inspection. A person whose commission has been suspended or revoked, except for untrustworthiness, shall be entitled to apply to the board for reinstatement or, in the case of a revocation, for a new examination and commission after ninety days from such revocation. [1951 c 32 § 19.]

70.79.190 Suspension, revocation of commission—Appeal. A person whose commission has been suspended or revoked shall be entitled to an appeal as provided in RCW 70.79.360 and to be present in person and/or represented by counsel on the hearing of the appeal. [1951 c 32 § 20.]

70.79.200 Lost or destroyed certificate or commission. If a certificate or commission is lost or destroyed, a new certificate or commission shall be issued in its place without another examination. [1951 c 32 § 21.]

70.79.210 Inspectors—Performance bond required. The chief inspector shall furnish a bond in the sum of five thousand dollars and each of the deputy inspectors, employed and paid by the state, shall furnish a bond in the sum of two thousand dollars conditioned upon the faithful performance of their duties and upon a true account of moneys handled by them respectively and the payment thereof to the proper recipient. The cost of said bonds shall be paid by the state. [1951 c 32 § 35.]

70.79.220 Inspections—Who shall make. The inspections herein required shall be made by the chief inspector, by a deputy inspector, or by a special inspector provided for in this chapter. [1951 c 32 § 25.]

70.79.230 Access to premises by inspectors. The chief inspector, or any deputy or special inspector, shall have free access, during reasonable hours, to any premises in the state where a boiler or unfired pressure vessel is being constructed, or is being installed or operated, for the purpose of ascertaining whether such boiler or unfired pressure vessel is constructed, installed and operated in accordance with the provisions of this chapter. [1951 c 32 § 17.]

70.79.240 Inspection of boilers, etc.—Scope—Frequency. Each boiler and unfired pressure vessel used or proposed to be used within this state, except boilers or unfired pressure vessels exempt in RCW 70.79.080 and 70.79.090, shall be thoroughly inspected as to their construction, installation, condition and operation, as follows:

(1) Power boilers shall be inspected annually both internally and externally while not under pressure and shall also be inspected annually externally while under pressure if possible;

(2) Low pressure heating boilers shall be inspected both internally and externally biennially where construction will permit;

(3) Unfired pressure vessels subject to internal corrosion shall be inspected both internally and externally biennially where construction will permit, except that

the board may, in its discretion, provide for longer periods between inspections;

(4) Unfired pressure vessels not subject to internal corrosion shall be inspected externally at intervals set by the board, but internal inspections shall not be required of unfired pressure vessels, the contents of which are known to be noncorrosive to the material of which the shell, head, or fittings are constructed, either from the chemical composition of the contents or from evidence that the contents are adequately treated with a corrosion inhibitor, provided that such vessels are constructed in accordance with the rules and regulations of the board or in accordance with standards substantially equivalent to the rules and regulations of the board, in effect at the time of manufacture. [1951 c 32 § 22.]

70.79.250 Inspection—Frequency—Grace period. In the case of power boilers a grace period of two months longer than the twelve months period may elapse between internal inspections of a boiler while not under pressure or between external inspections of a boiler while under pressure; in the case of low pressure heating boilers not more than twenty-six months shall elapse between inspections, and in the case of unfired pressure vessels not more than two months longer than the period between inspections prescribed by the board shall elapse between internal inspections. [1951 c 32 § 23.]

70.79.260 Inspection—Frequency—Modification by rules. The rules and regulations formulated by the board applying to the inspection of unfired pressure vessels may be modified by the board to reduce or extend the interval between required inspections where the contents of the vessel or the material of which it is constructed warrant special consideration. [1951 c 32 § 24.]

70.79.270 Hydrostatic test. If at any time a hydrostatic test shall be deemed necessary to determine the safety of a boiler or unfired pressure vessel, [the] same shall be made, at the discretion of the inspector, by the owner or user thereof. [1951 c 32 § 26.]

70.79.280 Inspection during construction. All boilers and all unfired pressure vessels to be installed in this state after the twelve months period from the date upon which the rules and regulations of the board shall become effective shall be inspected during construction as required by the applicable rules and regulations of the board by an inspector authorized to inspect boilers in this state, or, if constructed outside of the state, by an inspector holding a certificate from the national board of boiler and pressure vessel inspectors, or a certificate of competency as an inspector of boilers for a state that has a standard of examination substantially equal to that of this state as provided in RCW 70.79.170. [1951 c 32 § 27.]

70.79.290 Inspection certificate—Contents—Posting—Fee. If, upon inspection, a boiler or an unfired pressure vessel is found to comply with the rules and regulations of the board, the owner or user thereof shall pay directly to the chief inspector the sum of three

dollars, and the chief inspector, or his duly authorized representative, shall issue to such owner or user an inspection certificate bearing the date of inspection and specifying the maximum pressure under which the boiler or unfired pressure vessel may be operated. Such inspection certificate shall be valid for not more than fourteen months from its date in the case of power boilers and twenty-six months in the case of low pressure heating boilers, and for not more than two months longer than the authorized inspection period in the case of unfired pressure vessels. Certificates shall be posted under glass in the room containing the boiler or unfired pressure vessel inspected. If the boiler or unfired pressure vessel is not located within the building, the certificate shall be posted in a location convenient to the boiler or unfired pressure vessel inspected or, in the case of a portable boiler or unfired pressure vessel, the certificate shall be kept in a metal container to be fastened to the boiler or vessel in a tool box accompanying the boiler or unfired pressure vessel. [1970 ex.s. c 21 § 1; 1951 c 32 § 28.]

70.79.300 Inspection certificate invalid on termination of insurance. No inspection certificate issued for an insured boiler or unfired pressure vessel inspected by a special inspector shall be valid after the boiler or unfired pressure vessel, for which it was issued, shall cease to be insured by a company duly authorized by this state to carry such insurance. [1951 c 32 § 29.]

70.79.310 Inspection certificate—Suspension—Reinstatement. The chief inspector, or his authorized representative, may at any time suspend an inspection certificate when, in his opinion, the boiler or unfired pressure vessel for which it was issued, cannot be operated without menace to the public safety, or when the boiler or unfired pressure vessel is found not to comply with the rules and regulations herein provided. A special inspector shall have corresponding powers with respect to inspection certificates for boilers or unfired pressure vessels insured or unfired pressure vessels operated by the company employing him. Such suspension of an inspection certificate shall continue in effect until such boiler or unfired pressure vessel shall have been made to conform to the rules and regulations of the board, and until said inspection certificate shall have been reinstated. [1951 c 32 § 30.]

70.79.320 Operating without or exceeding inspection certificate prohibited—Penalty. After twelve months following the date on which this chapter becomes effective, it shall be unlawful for any person, firm, partnership, or corporation to operate under pressure in this state a boiler or unfired pressure vessel, to which this chapter applies, without a valid inspection certificate as provided for in this chapter. The operation of a boiler or unfired pressure vessel without such inspection certificate, or at a pressure exceeding that specified in such inspection certificate, shall constitute a misdemeanor on the part of the owner, user, or operator thereof. Each day of such unlawful operation shall be deemed a separate offense. [1951 c 32 § 31.]

70.79.330 Inspection fees—Expenses—Schedules. The owner or user of a boiler or pressure vessel required by this chapter to be inspected by the chief inspector, or his deputy inspector, shall pay directly to the chief inspector, upon completion of inspection, fees and expenses in accordance with the following schedule:

Inspections:

Boilers:

Not to exceed 500 square feet of total heating surface	internal:	\$10.00
	external:	5.00
From 500 square feet of total heating surface to 2500 square feet of total heating surface	internal:	20.00
	external:	10.00
For each additional 2500 square feet of total heating surface, or any portion thereof	internal:	10.00
	external:	5.00

Pressure Vessels:

Not to exceed 50 square feet in area as determined by multiplying the length of the shell by its diameter	internal:	5.00
	external:	5.00
For each additional 50 square feet in area or any portion thereof	internal:	5.00
	external:	5.00

When it is necessary to make a special inspection or witness the application of a hydrostatic test, the applicable internal inspection fee plus expenses shall be charged.

Shop inspections, field construction inspections and secondhand or resale inspections:

One-half day	\$50.00 plus expenses
One full day	\$80.00 plus expenses
One-half day:	Not to exceed 3 hours on site.
One full day:	Not to exceed 6 hours on site.

In excess of 6 hours on site: \$25.00 per hour or any portion thereof.

Expenses shall include:

Travel: \$5.00 per hour plus \$.10 per mile driven, or \$5.00 per hour plus actual cost of purchased transportation. Hourly travel charges shall not exceed \$50.00 for any 24-hour period.

Hotel and meals: Actual cost.

[1970 ex.s. c 21 § 2; 1963 c 217 § 1; 1951 c 32 § 32.]

70.79.350 Inspection fees—Receipts for and transfer. The chief inspector shall give an official receipt for said fees and shall transfer all sums so received to the treasurer of the state of Washington. [1951 c 32 § 34.]

70.79.360 Appeal from orders or acts. Any person aggrieved by an order or act of the director of the department of labor and industries, the chief inspector, under this chapter, may, within fifteen days after notice thereof, appeal from such order or act to the board which shall, within thirty days thereafter, hold a hearing after having given at least ten days written notice to all

interested parties. The board shall, within thirty days after such hearing, issue an appropriate order either approving or disapproving said order or act. A copy of such order by the board shall be given to all interested parties. Within thirty days after any order or act of the board, any person aggrieved thereby may file a petition in the superior court of the county of Thurston for a review thereof. The court shall summarily hear the petition and may make any appropriate order or decree. [1951 c 32 § 36.]

70.79.900 Severability—1951 c 32. The fact that any section, subsection, sentence, clause, or phrase of this chapter is declared unconstitutional or invalid for any reason shall not affect the remaining portions of this chapter. [1951 c 32 § 37.]

Chapter 70.82 CEREBRAL PALSY PROGRAM

Sections

- 70.82.010 Purpose and aim of program.
- 70.82.021 Cerebral palsy fund—Moneys transferred to general fund.
- 70.82.022 Cerebral palsy fund—Appropriations to be paid from general fund.
- 70.82.023 Cerebral palsy fund—Abolished.
- 70.82.024 Cerebral palsy fund—Warrants to be paid from general fund.
- 70.82.030 Eligibility.
- 70.82.040 Diagnosis.
- 70.82.050 Powers, duties, functions, unallocated funds, transferred.

70.82.010 Purpose and aim of program. It is hereby declared to be of vital concern to the state of Washington that all persons who are bona fide residents of the state of Washington and who are afflicted with cerebral palsy in any degree be provided with facilities and a program of service for medical care, education, treatment and training to enable them to become normal individuals. In order to effectively accomplish such purpose the department of social and health services, hereinafter called the department, is authorized and instructed and it shall be its duty to establish and administer facilities and a program of service for the discovery, care, education, hospitalization, treatment and training of educable persons afflicted with cerebral palsy, and to provide in connection therewith nursing, medical, surgical and corrective care, together with academic, occupational and related training. Such program shall extend to developing, extending and improving service for the discovery of such persons and for diagnostication and hospitalization and shall include cooperation with other agencies of the state charged with the administration of laws providing for any type of service or aid to handicapped persons, and with the United States government through any appropriate agency or instrumentality in developing, extending and improving such service, program and facilities. Such facilities shall include field clinics, diagnosis and observation centers, boarding schools, special classes in day schools, research facilities and such other facilities as shall be required to render appropriate aid to such persons. Existing facilities, buildings, hospitals and equipment belonging to or

operated by the state of Washington shall be made available for these purposes when use therefor does not conflict with the primary use of such existing facilities. Existing buildings, facilities and equipment belonging to private persons, firms or corporations or to the United States government may be acquired or leased. [1974 ex.s. c 91 § 2; 1947 c 240 § 1; Rem. Supp. 1947 § 5547-1.]

Severability—1974 ex.s. c 91: "If any provision of this 1974 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." [1974 ex.s. c 91 § 8.]

Emergency—**Effective date**—1974 ex.s. c 91: "This 1974 amendatory 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: *Provided*, That sections 2 through 5 of this 1974 amendatory act shall not take effect until July 1, 1974." [1974 ex.s. c 91 § 7.]

Severability—1947 c 240: "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application." [1947 c 240 § 5.] This applies to RCW 70.82.010, 70.82.030 and 70.82.040.

70.82.021 Cerebral palsy fund—**Moneys transferred to general fund.** All moneys in the state treasury to the credit of the state cerebral palsy fund on the first day of May, 1955, and all moneys thereafter paid into the state treasury for or to the credit of the state cerebral palsy fund, shall be and are hereby transferred to and placed in the general fund. [1955 c 326 § 1.]

70.82.022 Cerebral palsy fund—**Appropriations to be paid from general fund.** From and after the first day of April, 1955, all appropriations made by the thirty-fourth legislature from the state cerebral palsy fund shall be paid out of moneys in the general fund. [1955 c 326 § 2.]

70.82.023 Cerebral palsy fund—**Abolished.** From and after the first day of May, 1955, the state cerebral palsy fund is abolished. [1955 c 326 § 3.]

70.82.024 Cerebral palsy fund—**Warrants to be paid from general fund.** From and after the first day of May, 1955, all warrants drawn on the state cerebral palsy fund and not presented for payment shall be paid from the general fund, and it shall be the duty of the state treasurer and he is hereby directed to pay such warrants when presented from the general fund. [1955 c 326 § 4.]

70.82.030 Eligibility. Any resident of this state who is educable but so severely handicapped as the result of cerebral palsy that he is unable to take advantage of the regular system of free education of this state may be admitted to or be eligible for any service and facilities provided hereunder, provided such resident has lived in this state continuously for more than one year before his application for such admission or eligibility. [1947 c 240 § 3; Rem. Supp. 1947 § 5547-2.]

70.82.040 Diagnosis. Persons shall be admitted to or be eligible for the services and facilities provided herein only after diagnosis according to procedures and regulations established and approved for this purpose by the department of social and health services. [1974 ex.s. c 91 § 3; 1947 c 240 § 4; Rem. Supp. 1947 § 5547-3.]

Severability—Emergency—Effective date—1974 ex.s. c 91: See notes following RCW 70.82.010.

70.82.050 Powers, duties, functions, unallocated funds, transferred. All powers, duties and functions of the superintendent of public instruction or the state board of education relating to the Cerebral Palsy Center as referred to in chapter 39, Laws of 1973 2nd ex. sess. shall be transferred to the department of social and health services as created in chapter 43.20A RCW, and all unallocated funds within any account to the credit of the superintendent of public instruction or the state board of education for purposes of such Cerebral Palsy Center shall be transferred effective July 1, 1974 to the credit of the department of social and health services, which department shall hereafter expend such funds for such Cerebral Palsy Center purposes as contemplated in the appropriations therefor. All employees of the Cerebral Palsy Center on July 1, 1974 who are classified employees under chapter 41.06 RCW, the state civil service law, shall be assigned and transferred to the department of social and health services to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law. [1974 ex.s. c 91 § 4.]

Severability—Emergency—Effective date—1974 ex.s. c 91: See notes following RCW 70.82.010.

Chapter 70.83 PHENYLKETONURIA AND OTHER PREVENTABLE HERITABLE DISORDERS

Sections

- 70.83.010 Declaration of policy and purpose.
- 70.83.020 Screening tests of newborn infants.
- 70.83.030 Report of positive test to department of health.
- 70.83.040 Services and facilities of state agencies made available to families and physicians.
- 70.83.050 Rules and regulations to be adopted by state board of health.
- 70.83.060 Annual reports to governor and legislative council.

70.83.010 Declaration of policy and purpose. It is hereby declared to be the policy of the state of Washington to make every effort to detect as early as feasible and to prevent where possible phenylketonuria and other preventable heritable disorders leading to mental retardation or physical defects. [1967 c 82 § 1.]

70.83.020 Screening tests of newborn infants. It shall be the duty of the department of social and health services to require screening tests of all newborn infants before they are discharged from the hospital for the

detection of phenylketonuria and other heritable or metabolic disorders leading to mental retardation or physical defects as defined by the state board of health: *Provided*, That no such tests shall be given to any newborn infant whose parents or guardian object thereto on the grounds that such tests conflict with their religious tenets and practices. [1975-'76 2nd ex.s. c 27 § 1; 1967 c 82 § 2.]

70.83.030 Report of positive test to department of health. Laboratories, attending physicians, hospital administrators, or other persons performing or requesting the performance of tests for phenylketonuria shall report to the department of health all positive tests. The state board of health by rule and regulation shall, when it deems appropriate, require that positive tests for other heritable and metabolic disorders covered by this chapter be reported to the state department of health by such persons or agencies requesting or performing such tests. [1967 c 82 § 3.]

70.83.040 Services and facilities of state agencies made available to families and physicians. When notified of positive screening tests, the state department of health shall offer the use of its services and facilities, designed to prevent mental retardation or physical defects in such children, to the attending physician, or the parents of the newborn child if no attending physician can be identified.

The services and facilities of the state department of health, and other state and local agencies cooperating with the department of health in carrying out programs of detection and prevention of mental retardation and physical defects shall be made available to the family and physician to the extent required in order to carry out the intent of this chapter and within the availability of funds. [1967 c 82 § 4.]

70.83.050 Rules and regulations to be adopted by state board of health. The state board of health shall adopt rules and regulations necessary to carry out the intent of this chapter. [1967 c 82 § 5.]

70.83.060 Annual reports to governor and legislative council. The department shall report annually to the governor and the legislative council on the progress and effect of such testing programs. The first such report shall be delivered by January 1, 1968. [1967 c 82 § 6.]

Chapter 70.84 BLIND, HANDICAPPED AND DISABLED PERSONS— "WHITE CANE LAW"

Sections

- 70.84.010 Declaration—Policy.
- 70.84.020 "Guide dog" defined.
- 70.84.030 Guide dog—Extra charge or refusing service because of prohibited.
- 70.84.040 Standard of care for drivers of motor vehicles—Blind pedestrians carrying white cane or using guide dog.
- 70.84.050 Blind pedestrians not carrying white cane or using guide dog—Rights and privileges.
- 70.84.060 Unauthorized use of white cane or guide dog.
- 70.84.070 Penalty for violations.

- 70.84.080 Employment of blind, visually and physically handicapped persons in public service.
70.84.900 Short title.

70.84.010 Declaration—Policy. The legislature declares:

(1) It is the policy of this state to encourage and enable the blind, the visually handicapped and the otherwise physically disabled to participate fully in the social and economic life of the state, and to engage in remunerative employment.

(2) As citizens, the blind, the visually handicapped, and the otherwise physically disabled have the same rights as the able-bodied to the full and free use of the streets, highways, walkways, public buildings, public facilities, and other public places.

(3) The blind, the visually handicapped and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges on common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, and all other public conveyances, as well as in hotels, lodging places, places of public resort, accommodation, assemblage or amusement, and all other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. [1969 c 141 § 1.]

70.84.020 "Guide dog" defined. For the purpose of this chapter, the term "guide dog" shall mean a dog which is in working harness and is trained or approved by an accredited school engaged in training dogs for the purpose of guiding blind persons. [1969 c 141 § 2.]

70.84.030 Guide dog—Extra charge or refusing service because of prohibited. Every totally or partially blind person shall have the right to be accompanied by a guide dog in any of the places listed in RCW 70.84.010(3) without being required to pay an extra charge for the guide dog. It shall be unlawful to refuse service to a blind person in any such place solely because he is accompanied by a guide dog. [1969 c 141 § 3.]

70.84.040 Standard of care for drivers of motor vehicles—Blind pedestrians carrying white cane or using guide dog. The driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white in color (with or without a red tip) or using a guide dog shall take all necessary precautions to avoid injury to such blind pedestrian. Any driver who fails to take such precaution shall be liable in damages for any injury caused such pedestrian. It shall be unlawful for the operator of any vehicle to drive into or upon any crosswalk while there is on such crosswalk, any pedestrian wholly or partially blind, crossing or attempting to cross the roadway, if such pedestrian indicates his intention to cross or of continuing on, with a timely warning by holding up or waving a white cane, or using a guide dog. The failure of any such pedestrian so to signal shall not deprive him of the right of way accorded him by other laws. [1971 ex.s. c 77 § 1; 1969 c 141 § 4.]

70.84.050 Blind pedestrians not carrying white cane or using guide dog—Rights and privileges. A totally or partially blind pedestrian not carrying a white cane or using a guide dog in any of the places, accommodations, or conveyances listed in RCW 70.84.010, shall have all of the rights and privileges conferred by law on other persons. [1969 c 141 § 5.]

70.84.060 Unauthorized use of white cane or guide dog. It shall be unlawful for any pedestrian who is not totally or partially blind to use a white cane or guide dog in any of the places, accommodations, or conveyances listed in RCW 70.84.010 for the purpose of securing the rights and privileges accorded by the chapter to totally or partially blind people. [1969 c 141 § 6.]

70.84.070 Penalty for violations. Any person or persons, firm or corporation, or the agent of any person or persons, firm or corporation, who denies or interferes with admittance to or enjoyment of the public facilities enumerated in RCW 70.84.010, or otherwise interferes with the rights of a totally or partially blind person as set forth in RCW 70.84.010 shall be guilty of a misdemeanor. [1969 c 141 § 7.]

70.84.080 Employment of blind, visually and physically handicapped persons in public service. In accordance with the policy set forth in RCW 70.84.010, the blind, the visually handicapped and the otherwise physically disabled shall be employed in the state service, in the service of the political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved. [1969 c 141 § 9.]

70.84.900 Short title. This chapter shall be known and may be cited as the "White Cane Law." [1969 c 141 § 11.]

Chapter 70.85 PARTY LINE TELEPHONES—EMERGENCY CALLS

Sections

- 70.85.010 Definitions.
70.85.020 Refusal to yield line—Penalty.
70.85.030 Request for line on pretext of emergency—Penalty.
70.85.040 Telephone directories—Notice.

Call to operator without charge or coin insertion be provided: RCW 80.36.225.

Fraud in operating coin-box telephone: RCW 9.45.180.

Telephone and telegraph companies: Chapter 80.36 RCW.

70.85.010 Definitions. "Party line" means a subscribers' line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

"Emergency" means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential. [1953 c 25 § 1.]

70.85.020 Refusal to yield line—Penalty. Any person who shall wilfully refuse to yield or surrender the use of a party line to another person for the purpose of permitting such other person to report a fire or summon police, medical or other aid in case of emergency, shall be deemed guilty of a misdemeanor. [1953 c 25 § 2.]

70.85.030 Request for line on pretext of emergency—Penalty. Any person who shall ask for or request the use of a party line on pretext that an emergency exists, knowing that no emergency in fact exists, shall be deemed guilty of a misdemeanor. [1953 c 25 § 3.]

70.85.040 Telephone directories—Notice. After September 9, 1953, every telephone directory thereafter distributed to the members of the general public shall contain a notice which explains this chapter, such notice to be printed in type which is no smaller than any other type on the same page and to be preceded by the word "warning": *Provided*, That the provisions of this section shall not apply to those directories distributed solely for business advertising purposes, commonly known as classified directories. [1953 c 25 § 4.]

Chapter 70.86 EARTHQUAKE RESISTANCE STANDARDS

Sections

70.86.010	Definitions.
70.86.020	Buildings to resist earthquake intensities.
70.86.030	Standards for design and construction.
70.86.040	Penalty.

70.86.010 Definitions. The word "person" includes any individual, corporation, or group of two or more individuals acting together for a common purpose, whether acting in an individual, representative, or official capacity. [1955 c 278 § 1.]

70.86.020 Buildings to resist earthquake intensities. Hospitals, schools, except one story, portable, frame school buildings, buildings designed or constructed as places of assembly accommodating more than three hundred persons; and all structures owned by the state, county, special districts, or any municipal corporation within the state of Washington shall hereafter be designed and constructed to resist probable earthquake intensities at the location thereof in accordance with RCW 70.86.030, unless other standards of design and construction for earthquake resistance are prescribed by enactments of the legislative authority of counties, special districts, and/or municipal corporations in which the structure is constructed. [1955 c 278 § 2.]

70.86.030 Standards for design and construction. Structural frames, exterior walls, and all appendages of the buildings described in RCW 70.86.020, whose collapse will endanger life and property shall be designed and constructed to withstand horizontal forces from any direction of not less than the following fractions of the weight of the structure and its parts acting at the centers of gravity:

Western Washington 0.05. [1955 c 278 § 3.]

70.86.040 Penalty. Any person violating any provision of this chapter shall be guilty of a misdemeanor: *Provided*, That any person causing such a building to be built shall be entitled to rely on the certificate of a licensed professional engineer and/or registered architect that the standards of design set forth above have been met. [1955 c 278 § 4.]

Chapter 70.87 ELEVATORS, LIFTING DEVICES, AND MOVING WALKS

Sections

70.87.010	Definitions.
70.87.020	Conveyances to be safe and in conformity with law.
70.87.030	Director of labor and industries to administer—Rules and regulations.
70.87.040	Privately and publicly owned conveyances are subject to chapter.
70.87.050	Conveyances in buildings occupied by state, county or political subdivision.
70.87.060	Responsibility for operation and maintenance of equipment and for periodic tests.
70.87.070	Serial numbers.
70.87.080	Installation permits—When required—Application for—Posting.
70.87.090	Operating permits—Limited permits—Duration—Posting—Revocation.
70.87.100	Acceptance tests.
70.87.110	Exceptions authorized.
70.87.120	Inspectors—Inspections and reinspections—Order to discontinue use.
70.87.140	Operation without permit enjoinable.
70.87.150	Noncompliance with inspection report—Hearing to show cause.
70.87.160	Noncompliance with inspection report—Order pursuant to hearing—Rehearing—Judicial review as for safety orders.
70.87.170	Judicial review of orders in accordance with administrative procedure act.
70.87.180	Violations—Penalties.
70.87.190	Accidents—Report and investigation—Cessation of use—Removal of damaged parts.
70.87.200	Exemptions.
70.87.210	Disposition of revenue.
70.87.900	Severability—1963 c 26.

State building code: Chapter 19.27 RCW.

70.87.010 Definitions. For the purposes of this chapter, except where a different interpretation is required by the context:

(1) "Owner" means any person having title to or control of a conveyance, as guardian, trustee, lessee or otherwise;

(2) "Conveyance" means an elevator, escalator, dumbwaiter, belt manlift, automobile parking elevator and moving walk, all as defined herein;

(3) "Existing installations" means all conveyances for which plans were completed and accepted by the owner, or the plans and specifications for which have been filed with and approved by the department of labor and industries before the *effective date of this chapter and work on the erection of which was begun not more than twelve months thereafter;

(4) "Elevator" means a hoisting or lowering machine equipped with a car or platform which moves in guides

in a substantially vertical direction and which serves two or more floors or landings of a building or structure;

(a) "Passenger elevator" means an elevator on which passengers are permitted to ride and may be used to carry freight or materials when the load carried does not exceed the capacity of the elevator;

(b) "Freight elevator" means an elevator used primarily for carrying freight and on which only the operator, the persons necessary for loading and unloading and such employees as may be approved by the department of labor and industries are permitted to ride;

(c) "Sidewalk elevator" means a freight elevator which operates between a sidewalk or other area exterior to the buildings and floor levels inside the building below such area, which has no landing opening into the building at its upper limit of travel and which is not used to carry automobiles;

(5) "Escalator" means a power driven, inclined, continuous stairway used for raising and lowering passengers;

(6) "Dumbwaiter" means a hoisting and lowering mechanism equipped with a car which moves in guides in a substantially vertical direction, the floor area of which does not exceed nine square feet, whose total inside height, whether or not provided with fixed or removable shelves, does not exceed four feet, the capacity of which does not exceed five hundred pounds and is used exclusively for carrying materials;

(7) "Automobile parking elevator" means an elevator located in either a stationary or horizontally moving hoistway and used exclusively for parking automobiles where, during the parking process, each automobile is moved either under its own power or by means of a power driven transfer device onto and off the elevator directly into parking spaces or cubicles in line with the elevator and where no persons are normally stationed on any level except the receiving level;

(8) "Moving walk" means a type of passenger carrying device on which passengers stand or walk and whose passenger carrying surface remains parallel to its direction of motion;

(9) "Belt manlift" means a device consisting of a power driven endless belt provided with steps or platforms and hand hold attached to it for the transportation of personnel from floor to floor;

(10) "Division" means the division of industrial safety and health of the department of labor and industries;

(11) "Supervisor" means the supervisor, of the division of industrial safety and health of the department of labor and industries;

(12) "Inspector" means any safety or elevator inspector of the division including assistant and deputy inspectors, or the mechanical or elevator inspectors of the municipality having in effect an elevator ordinance as hereinafter set forth;

(13) "Permit" means a permit issued by the supervisor to construct, install or operate a conveyance.

(14) "One man capacity manlift" means a single passenger, hand powered counterweighted device, or electric powered device, which travels vertically in guides and serves two or more landings. [1973 1st ex.s. c 52 § 9; 1969 ex.s. c 108 § 1; 1963 c 26 § 1.]

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

***Effective date**—1963 c 26: The "effective date of this chapter" was June 13, 1963, see preface, 1963 session laws.

70.87.020 Conveyances to be safe and in conformity with law. The purpose of this chapter is to provide for the safe mechanical and electrical operation, erection, installation, alteration, inspection, and repair of conveyances, and all such operation, erection, installation, alteration, inspection, and repair subject to the provisions of this chapter shall be reasonably safe to persons and property and in conformity with the provisions of this chapter and the applicable statutes of the state of Washington, and all orders, rules and regulations of the department of labor and industries issued by authority thereof. Conformity in this respect with the applicable rules and regulations set forth in the American Standard Safety Code for Elevators, Dumbwaiters and Escalators shall be prima facie evidence that such operation, erection, installation, alteration, inspection and repair is reasonably safe to persons and property. [1963 c 26 § 2.]

70.87.030 Director of labor and industries to administer—Rules and regulations. The director of the department of labor and industries shall administer this chapter through the supervisor of the division of building and construction safety inspection services: *Provided*, That, except for the new construction thereof, all hand-powered elevators, belt manlifts, and one-man capacity manlifts installed in or on grain elevators shall be the responsibility of the division of industrial safety and health of the department of labor and industries. The supervisor shall promulgate and adopt such rules and regulations governing the mechanical and electrical operation, erection, installation, alterations, inspection, acceptance tests, and repair of conveyances as may be necessary and appropriate and shall also promulgate and adopt minimum standards governing existing installations: *Provided*, That in the execution of this rule making power and prior to the promulgation and adoption of rules and regulations by the supervisor, he shall consider generally the rules and regulations for the safe mechanical operation, erection, installation, alteration, inspection, and repair of conveyances, including the American Standard Safety Code for Elevators, Dumbwaiters and Escalators, and any amendatory or supplemental provisions thereto, and he shall be guided by the provisions thereof where pertinent and consistent with the purposes of this chapter. The director of the department of labor and industries by rule and regulation shall establish a schedule of fees to pay the costs incurred by the department for the work related to administration and enforcement of this chapter. Nothing in this chapter shall limit the authority of the division to prescribe or enforce general or special safety orders as provided by law. [1973 1st ex.s. c 52 § 10; 1971 c 66 § 1; 1970 ex.s. c 22 § 1; 1963 c 26 § 3.]

Effective date—1973 1st ex.s. c 52: See RCW 43.22.010.

70.87.040 Privately and publicly owned conveyances are subject to chapter. All privately owned conveyances and all publicly owned conveyances are subject to the provisions of this chapter except as hereinafter specifically excluded. [1963 c 26 § 4.]

70.87.050 Conveyances in buildings occupied by state, county or political subdivision. The operation, erection, installation, alteration, inspection, and repair of any conveyance located in, or used in connection with any building owned by the state, county, or any political subdivision not otherwise exempted by this chapter, even though located within a city having an elevator code, shall be under the jurisdiction of the Washington state department of labor and industries. [1969 ex.s. c 108 § 2; 1963 c 26 § 5.]

70.87.060 Responsibility for operation and maintenance of equipment and for periodic tests. (1) The person or firm installing, relocating or altering any conveyance shall be responsible for its operation and maintenance until the operating permit therefor has been issued by the supervisor except during the period when any limited operating permit as defined in RCW 70.87.090(2) shall be in effect, and shall also be responsible for all tests of new, relocated, and altered equipment until the operating permit thereof has been issued by the supervisor.

(2) The owner or his duly appointed agent shall be responsible for the safe operation and proper maintenance of the conveyance after the operating permit has been issued by the supervisor and also during the period of effectiveness of any limited operating permit as defined in RCW 70.87.090(2). The owner shall be responsible for all periodic tests required by the supervisor. [1963 c 26 § 6.]

70.87.070 Serial numbers. All new and existing conveyances shall have a serial number painted on or attached as directed by the supervisor. This serial number shall be assigned by the supervisor and shown on all required permits. [1963 c 26 § 7.]

70.87.080 Installation permits—When required—Application for—Posting. (1) An installation permit shall be obtained from the supervisor before erecting, installing, relocating, or altering a conveyance.

(2) The installer of the conveyance shall submit an application for such permit in duplicate, in such form as the supervisor may prescribe.

(3) The permit issued by the supervisor shall be kept posted conspicuously at the site of installation.

(4) No permit shall be required for repairs and replacement normally necessary for maintenance and made with parts of equivalent materials, strength and design. [1963 c 26 § 8.]

70.87.090 Operating permits—Limited permits—Duration—Posting—Revocation. (1) An operating permit shall be required for each conveyance operated in the state of Washington except during its

erection by the person or firm responsible for its installation. A permit issued by the supervisor shall remain in effect and be kept conspicuously posted near the conveyance or in the machine room thereof.

(2) The supervisor may permit the temporary use of any conveyance during its installation or alteration, under the authority of a limited permit issued by the supervisor for each class of service. Limited permits shall be issued for a period not to exceed thirty days and may be renewed at the discretion of the supervisor. Where a limited permit is issued, a notice bearing the information that the equipment has not been finally approved shall be conspicuously posted.

(3) The supervisor may at any time and after giving notice and an opportunity to be heard in accordance with the provisions of chapter 34.04 RCW, in the interest of safety, revoke any current permit to operate a conveyance. [1963 c 26 § 9.]

70.87.100 Acceptance tests. (1) The person or firm installing, relocating or altering conveyances shall notify the supervisor in writing, at least seven days before completion of the work, and shall subject the new, moved, or altered portions of the equipment to the acceptance tests.

(2) All new, altered, or relocated conveyances where a permit has been issued, shall be inspected for compliance with the requirements of this chapter by an inspector in the employ of the division who shall also witness the test specified. [1963 c 26 § 10.]

70.87.110 Exceptions authorized. The requirements of this chapter are intended to apply to all conveyance installations except as modified or waived by the supervisor. They are intended to be modified or waived whenever any requirements are shown to be impracticable, such as involving expense not justified by the protection secured: *Provided*, That equivalent or safer construction is secured in other ways. Such exceptions shall apply only to the installation covered by the application for waiver. [1963 c 26 § 11.]

70.87.120 Inspectors—Inspections and reinspections—Order to discontinue use. (1) The supervisor shall appoint and employ inspectors, as may be necessary to carry out the provisions of this chapter, under the provisions of the rules and regulations adopted by the state personnel board in accordance with chapter 41.06 RCW.

(2) The supervisor shall cause all conveyances to be inspected and tested at least once each year. Inspectors shall have the right during reasonable hours to enter into and upon any building or premises in the discharge of their official duties, for the purpose of making any inspection or testing any conveyance contained thereon or therein. Inspections and tests shall conform with the rules and regulations promulgated and adopted by the supervisor. All installations shall be inspected by the supervisor before any initial permit for operation shall be issued. Permits shall not be issued until the fees herein have been paid.

(3) If inspection shows a conveyance to be in an unsafe condition, the supervisor shall issue an inspection report in writing requiring the repairs or alterations to be made to the conveyance which are necessary to render it safe, and may order the operation thereof discontinued until the repairs or alterations are made or the unsafe conditions are removed. [1970 ex.s. c 22 § 2; 1963 c 26 § 12.]

Schedule of fees, establishment: RCW 70.87.030.

70.87.140 Operation without permit enjoined. Whenever any conveyance is being operated without the permit herein required, the attorney general or the prosecuting attorney of the county may apply to the superior court of the county in which the conveyance is located for an injunction restraining the operation thereof until such condition is corrected. No bond shall be required from the division in such proceedings. [1963 c 26 § 14.]

70.87.150 Noncompliance with inspection report—Hearing to show cause. If all corrections stated on the inspection report are not complied with, a hearing before the supervisor may be held at the supervisor's request in accordance with the provisions of chapter 34.04 RCW, at which the owner, operator, or other person in charge of the conveyance shall appear and show cause why he should not comply with the report. Failure to do so, without sufficient reasons, will be prima facie evidence of noncompliance. [1963 c 26 § 15.]

70.87.160 Noncompliance with inspection report—Order pursuant to hearing—Rehearing—Judicial review as for safety orders. If it appears to the supervisor after hearing that the conveyance is unsafe and that the requirements contained in the inspection report should be complied with or that other things should be done to make such equipment safe, the supervisor may order or confirm the withholding of the permit and may make such requirements as he deems proper for repair or alterations and for the correction of such unsafe conditions. Such orders may thereafter be reheard by the supervisor or reviewed by the courts in the manner specified for safety orders of the division. [1963 c 26 § 16.]

Judicial review of safety orders: RCW 49.17.150.

70.87.170 Judicial review of orders in accordance with administrative procedure act. Any person aggrieved by any order of the supervisor may have the same reviewed by the courts in accordance with the provisions of chapter 34.04 RCW. [1963 c 26 § 17.]

70.87.180 Violations—Penalties. (1) The construction, installation, relocation, alteration, or operation of a conveyance by any person owning or having the custody, management or operation thereof without a permit except as provided in RCW 70.87.080 and 70.87.090 is a misdemeanor and shall be punishable by a fine not to exceed two hundred fifty dollars, or ninety days in the county jail. Each day of violation shall be a separate offense. No prosecution shall be maintained where the issuance or renewal of a permit has been

requested but upon which no action has been taken by the supervisor.

(2) Every person who shall wilfully or continuously violate or fail to comply with any rule or regulation of the division promulgated under authority of this chapter, shall be punished by a penalty of not more than two hundred fifty dollars. [1963 c 26 § 18.]

70.87.190 Accidents—Report and investigation—Cessation of use—Removal of damaged parts. The owner or his duly authorized agent shall promptly notify the supervisor of each and every accident to a person requiring the service of a physician or disability exceeding one day, and shall afford the supervisor every facility for investigating and inspecting such accident. The supervisor shall without delay, after being notified, make an inspection and shall have placed on file a full and complete report of such accident. Such report shall give in detail all material facts and information available and the cause or causes, so far as they can be determined. The report shall be open to public inspection at all reasonable hours. When an accident involves the failure or destruction of any part of the construction or the operating mechanism of a conveyance, the use of such device is forbidden until it has been made safe and until it has been reinspected and any repairs, changes, or alterations have been approved by the supervisor and a permit on such a form as he may prescribe has been issued by him. The removal of any part of the damaged construction or operating mechanism from the premises is forbidden until permission to do so has been granted by the supervisor. [1963 c 26 § 19.]

70.87.200 Exemptions. The provisions of this chapter shall not apply where:

(1) A conveyance is permanently removed from service and/or made effectively inoperative or to lifts, man hoists or material hoists which are erected temporarily for use during or for the duration of construction work only and are of such design that they must be operated by a workman stationed at the hoisting machine.

(2) Municipalities having in effect an elevator code prior to the adoption of the original act of 1963 may continue to assume jurisdiction over the operation, erection, installation, alteration or repair of elevators, escalators, dumbwaiters, moving walks, manlifts and parking elevators and may inspect, issue permits, collect fees and prescribe minimum requirements for the construction, design, use and maintenance of such conveyances providing such requirements are equal to or in conformity with the requirements of this chapter and to all rules and regulations pertaining to such conveyances as adopted and administered by the Washington state department of labor and industries. Upon the failure of any municipality to carry out the provisions of this chapter with regard to any conveyances or conveyance the Washington state department of labor and industries may assume jurisdiction over any such conveyances. A municipality upon electing not to maintain jurisdiction over certain conveyances located therein, may mutually enter into a written agreement with the Washington state department of labor and industries transferring

exclusive jurisdiction of such conveyances to said department. [1969 ex.s. c 108 § 4; 1963 c 26 § 20.]

70.87.210 Disposition of revenue. All moneys received or collected under the terms of this chapter shall be deposited in the general fund. [1963 c 26 § 21.]

70.87.900 Severability—1963 c 26. 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 26 § 22.]

**Chapter 70.88
CONVEYANCES FOR PERSONS IN
RECREATIONAL ACTIVITIES**

Sections

- 70.88.010 Safe and adequate facilities and equipment required of owner and operator—Operator not common carrier.
- 70.88.020 Plans, specifications to be submitted to state parks and recreation commission—Approval—Penalty.
- 70.88.030 Orders directing repairs, improvements, changes, etc.—Notice—Forbidding operation.
- 70.88.040 Penalty for violation of chapter or rules, etc., of parks and recreation commission.
- 70.88.050 Inspector of recreational devices—Employees.
- 70.88.060 Powers and duties of inspector—Condemnation of equipment—Annual inspection.
- 70.88.070 Costs of inspection—Lien—Disposition of funds.
- 70.88.080 State immunity from liability—Actions deemed exercise of police power.
- 70.88.090 Rules, regulations, and codes.
- 70.88.100 Judicial review.

70.88.010 Safe and adequate facilities and equipment required of owner and operator—Operator not common carrier. Every owner or operator of any recreational device designed and operated for the conveyance of persons which aids in promoting entertainment, pleasure, play, relaxation, or instruction, specifically including devices generally associated with winter sports activities such as ski lifts, ski tows, j-bars, t-bars, ski mobiles, chair lifts, and similar devices and equipment, shall construct, furnish, maintain, and provide safe and adequate facilities and equipment with which safely and properly to receive and transport all persons offered to and received by the owner or operator of such devices, and to promote the safety of such owner's or operator's patrons, employees and the public. The owner or operator of the devices and equipment covered by this section shall be deemed not to be a common carrier. [1965 ex.s. c 85 § 1; 1961 c 253 § 1; 1959 c 327 § 1.]

70.88.020 Plans, specifications to be submitted to state parks and recreation commission—Approval—Penalty. It shall be unlawful after the *effective date of this chapter to construct or install any such recreational device as set forth in RCW 70.88.010 without first submitting plans and specifications for such device to the state parks and recreation commission and receiving the approval of the commission for such construction or installation. Violation of this section shall be a misdemeanor. [1959 c 327 § 2.]

*Effective date—1959 c 327: The "effective date of this chapter" is midnight June 10, 1959, see preface 1959 session laws.

70.88.030 Orders directing repairs, improvements, changes, etc.—Notice—Forbidding operation. The state parks and recreation commission shall have the authority and the responsibility for the inspection of the devices set forth in RCW 70.88.010 and in addition shall have the following powers and duties:

(1) Whenever the commission, after hearing called upon its own motion or upon complaint, finds that additional apparatus, equipment, facilities or devices for use or in connection with the transportation or conveyance of persons upon the devices set forth in RCW 70.88.010, ought reasonably to be provided, or any repairs or improvements to, or changes in, any theretofore in use ought reasonably to be made, or any additions or changes in construction should reasonably be made thereto, in order to promote the security and safety of the public or employees, it may make and serve an order directing such repairs, improvements, changes, or additions to be made.

(2) If the commission finds that the equipment, or appliances in connection therewith, or the apparatus, or other structures of the recreational device set forth in RCW 70.88.010 are defective, and that the operation thereof is dangerous to the employees of the owner or operator of such device or to the public, it shall immediately give notice to the owner or operator of such device of the repairs or reconstruction necessary to place the same in a safe condition, and may prescribe the time within which they shall be made. If, in its opinion, it is needful or proper, the commission may forbid the operation of the device until it is repaired and placed in a safe condition. [1959 c 327 § 3.]

70.88.040 Penalty for violation of chapter or rules, etc., of parks and recreation commission. Any violation of this chapter or the rules, regulations and codes of the state parks and recreation commission relating to public safety in the construction, operation and maintenance of the recreational devices provided for in this chapter shall be a misdemeanor. [1965 ex.s. c 85 § 2; 1959 c 327 § 4.]

70.88.050 Inspector of recreational devices—Employees. The state parks and recreation commission shall employ or retain a person qualified in engineering experience and training who shall be designated as the inspector of recreational devices, and may employ such additional employees as are necessary to properly administer this chapter. The inspector and such additional employees may be hired on a temporary basis or borrowed from other state departments, or the commission may contract with individuals or firms for such inspecting service on an independent basis. The commission shall prescribe the salary or other remuneration for such service. [1959 c 327 § 5.]

70.88.060 Powers and duties of inspector—Condemnation of equipment—Annual inspection. The inspector of recreational devices and his assistants shall inspect all equipment and appliances connected with the recreational devices set forth in RCW 70.88.010 and

make such reports of his inspection to the commission as may be required. He shall, on discovering any defective equipment, or appliances connected therewith, rendering the use of the equipment dangerous, immediately report the same to the owner or operator of the device on which it is found, and in addition report it to the commission. If in the opinion of the inspector the continued operation of the defective equipment constitutes an immediate danger to the safety of the persons operating or being conveyed by such equipment, the inspector may condemn such equipment and shall immediately notify the commission of his action in this respect: *Provided*, That inspection required by this chapter must be conducted at least once each year. [1959 c 327 § 6.]

70.88.070 Costs of inspection—Lien—Disposition of funds. The expenses incurred in connection with making inspections under this chapter shall be paid by the owner or operator of such recreational devices either by reimbursing the commission for the costs incurred or by paying directly such individuals or firms that may be engaged by the commission to accomplish the inspection service. Payment shall be made only upon notification by the commission of the amount due. The commission shall maintain accurate and complete records of the costs incurred for each inspection and shall assess the respective owners or operators of said recreational devices only for the actual costs incurred by the commission for such safety inspections. The costs as assessed by the commission shall be a lien on the equipment of the owner or operator of the recreational devices so inspected. Such moneys collected by the commission hereunder shall be paid into the parks and parkways account of the general fund. [1975 1st ex.s. c 74 § 1; 1961 c 253 § 2; 1959 c 327 § 7.]

70.88.080 State immunity from liability—Actions deemed exercise of police power. Inspections, rules, and orders of the department resulting from the exercise of the provisions of this chapter shall not in any manner be deemed to impose liability upon the state for any injury or damage resulting from the operation of the facilities regulated by this chapter, and all actions of the department and its personnel shall be deemed to be an exercise of the police power of the state. [1959 c 327 § 8.]

70.88.090 Rules, regulations, and codes. The state parks and recreation commission is empowered to adopt reasonable rules, regulations, and codes relating to public safety in the construction, operation and maintenance of the recreational devices provided for in this chapter. The rules, regulations and codes authorized hereunder shall be in accordance with established standards, if any, and shall not be discriminatory in their application. [1959 c 327 § 9.]

70.88.100 Judicial review. The procedure for review of the orders or actions of the state parks and recreation commission, its agents or employees, shall be the same as that contained in RCW 81.04.170, 81.04.180, and 81.04.190. [1959 c 327 § 10.]

Chapter 70.89 SAFETY GLAZING MATERIAL

Sections	
70.89.005	Purpose.
70.89.010	Safety glazing material defined—Types—Tests—Definitions.
70.89.021	Safety glazing material for use in hazardous locations—Labeling requirements.
70.89.031	Sale, fabrication, assembly, installation of other than safety glazing materials in hazardous locations unlawful.
70.89.040	Penalty.
70.89.050	Employees not liable.
70.89.060	Local ordinances superseded.
70.89.070	Enforcement of chapter.
70.89.900	Severability—1963 c 128.
70.89.910	Construction, effective date, prospective application—1973 1st ex.s. c 2.

70.89.005 Purpose. The purpose of this chapter is to protect the consumer by reducing the high incidence of accidental injuries and deaths resulting from the use of ordinary annealed glass or substitutes therefor in hazardous locations. The legislature intends to provide to the homeowner, his family and guests, and to the general public, greater safety by prescribing the labeling and use of safety glazing material in hazardous locations in residential, commercial, industrial, and public buildings. [1973 1st ex.s. c 2 § 1.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.010 Safety glazing material defined—Types—Tests—Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Safety glazing material" means glazing materials, such as tempered glass, laminated glass, or wire glass which meet the test requirements of the American national standards institute standard ANSI-97.1-1972 and such additional requirements as may be prescribed by the director of the department of labor and industries after notice and hearing as required by chapter 34.04 RCW (the administrative procedure act), and which are so constructed, treated or combined with other materials as to minimize the likelihood of injury to persons by these safety glazing materials when they may be cracked or broken.

Materials other than glass which have properties supported by performance data may be approved by the director for use as glazing material.

(2) "Hazardous locations" means those structural elements, glazed or to be glazed in industrial, commercial and public buildings, known as framed or unframed glass entrance doors; and those structural elements, glazed or to be glazed in residential buildings and other structures used as dwellings, industrial buildings, commercial buildings, and public buildings, known as sliding glass doors, storm doors, shower doors, bathtub enclosures, and those fixed glazed panels immediately adjacent to entrance and exit doors which may be mistaken for doors; and any other structural elements, glazed or to be glazed, wherein the use of other than safety glazing materials would constitute an unreasonable hazard as the director of the department of labor and industries may determine after notice and hearings as required by chapter 34.04 RCW (the administrative procedure act);

whether or not the glazing in such doors, panels, enclosures and other structural elements is transparent: *Provided, however,* That the replacement of opaque, nontransparent panels in buildings which are completed prior to the effective date of this amendatory act shall not be subject to the provisions of *the act.

(3) "Commercial buildings" means buildings known as wholesale and retail stores and storerooms, and office buildings.

(4) "Public buildings" means buildings known as hotels, hospitals, motels, sanitariums, nursing homes, theatres, stadiums, gymnasiums, amusement park buildings, schools and other buildings used for educational purposes, museums, restaurants, bars, and other buildings of public assembly.

(5) "Residential buildings" means buildings, known as homes, apartments, and dormitories used as dwellings for one or more families or persons.

(6) "Other structures used as dwellings" means mobile homes, manufactured or industrialized housing and lodging homes.

(7) "Industrial buildings" means buildings known as factories.

(8) "Commercial entrance and exit door" means a hinged, pivoting, revolving, or sliding door which is glazed or to be glazed and used alone or in combination with other doors on the interior or exterior wall of a commercial or public building as a means of ingress or egress.

(9) "Primary residential entrance and exit door" means a door (other than doors covered by subsection (10) of this section) which is glazed or to be glazed and used in the exterior wall of a residential building as a means of ingress or egress.

(10) "Storm or combination door" means a door which is glazed or to be glazed, and used in tandem with a primary residential or commercial entrance and exit door to protect the primary residential or commercial entrance or exit door against weather elements and to improve indoor climate control.

(11) "Bathtub enclosure" means a sliding, pivoting, or hinged door and fixed panels which are glazed or to be glazed and used to form a barrier between the bathtub and the rest of the room areas.

(12) "Shower enclosure" means a hinged, pivoting, or sliding door and fixed panels which are glazed or to be glazed and used to form a barrier between the shower stall and the rest of the room area.

(13) "Sliding glass door units" means an assembly of glazed or to be glazed panels contained in an overall frame installed in residential, commercial or public buildings, and which assembly is so designed that one or more of the panels is movable in a horizontal direction to produce or close off an opening for use as a means of ingress or egress.

(14) "Fixed flat glazed panels immediately adjacent to entrance or exit doors" means the first fixed flat glazed panel on either or both sides of interior or exterior doors, between eighteen and forty-eight inches in width, within six feet horizontally of the nearest vertical edge of the door, but shall not include any glass panel more than eighteen inches above the finished floor walking surface.

(15) "Glazing" means the act of installing and securing glass or other glazing material into prepared openings in structural elements such as doors, enclosures, and panels.

(16) "Glazed" means the accomplished act of glazing.

(17) "Director" means the director of the department of labor and industries of the state of Washington. [1973 1st ex.s. c 2 § 2; 1963 c 128 § 1.]

***Reviser's note:** "the act" apparently refers to 1973 1st ex.s. c 2 which consists of RCW 70.89.005, 70.89.021, 70.89.031, 70.89.050-70.89.070 and 70.89.910, the amendments to RCW 70.89.010 and 70.89.040, and to the repeal of RCW 70.89.020 and 70.89.030.

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.021 Safety glazing material for use in hazardous locations—Labeling requirements. (1) All safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in such a location within the state of Washington shall be permanently labeled by such means as etching, sandblasting, firing of ceramic material, hot-die stamping, on the safety glazing material, or by other suitable means. Each light of safety glazing material installed in a hazardous location within the state, shall have attached a transparent label which shall identify the labeler, whether the manufacturer or installer, and state that "safety glazing material" has been utilized in such installation. The label shall be legible and visible from the inside of the building after installation and shall specify that the label shall not be removed.

The label must be legible and visible after installation.

(2) Such safety glazing labeling shall not be used on other than safety glazing materials.

(3) Permanent labeling of wire glass shall not be required where the seller or installer of such wire glass furnishes to each buyer thereof a certificate stating that such wire glass meets the test requirements set forth in RCW 70.89.010, as now or hereafter amended, when such alternate method is approved by the director of the department of labor and industries. [1973 1st ex.s. c 2 § 3.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.031 Sale, fabrication, assembly, installation of other than safety glazing materials in hazardous locations unlawful. It shall be unlawful within the state of Washington to knowingly sell, fabricate, assemble, glaze or install glazing materials other than safety glazing materials in, or for use in, any hazardous location. [1973 1st ex.s. c 2 § 4.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.040 Penalty. The violation of any provision of this chapter shall constitute a misdemeanor. [1973 1st ex.s. c 2 § 8; 1963 c 128 § 4.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.050 Employees not liable. No liability under this chapter shall be created as to workmen who are employees of a contractor, subcontractor, or other employer responsible for compliance with this chapter. [1973 1st ex.s. c 2 § 5.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.060 Local ordinances superseded. This chapter shall supersede any local, municipal or county ordinance or parts thereof relating to the subject matter hereof. [1973 1st ex.s. c 2 § 6.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.070 Enforcement of chapter. Each city, county, or department, agency, or other authority of the state of Washington which inspects the new construction or remodeling of residential, commercial, industrial, or public structures shall in their respective jurisdictions be responsible for the enforcement of this chapter and any regulations made pursuant thereto. [1973 1st ex.s. c 2 § 7.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.900 Severability—1963 c 128. If any provision of this chapter, or its application to any person or circumstance is held to be invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1963 c 128 § 5.]

70.89.910 Construction, effective date, prospective application—1973 1st ex.s. c 2. It is the intent of the legislature that the application of *this act shall be prospective only. The provisions of *this 1973 amendatory act shall not take effect until January 1, 1974, and shall not apply to contracts awarded on or before the effective date of *this act: *Provided*, That except for replacement or new installations of materials *this 1973 amendatory act shall not apply to buildings or construction completed prior to the effective date of *this act. [1973 1st ex.s. c 2 § 10.]

***Reviser's note:** "this act", "this 1973 amendatory act", see note following RCW 70.89.010.

Chapter 70.90 SWIMMING POOLS

Sections

70.90.010	Definitions.
70.90.020	Construction, alteration—Plans and specifications to be approved by director.
70.90.030	Rules and regulations.
70.90.040	Enforcement—Penalty.
70.90.900	Application of chapter.

70.90.010 Definitions. (1) The term "swimming pool" as used in this chapter shall mean an artificial pool of water used for swimming or recreational bathing, together with buildings and appurtenances in connection therewith, and shall be construed as including all pools of water used for swimming or recreational bathing in which it is necessary to employ such measures as the addition of clean water or disinfectant or both for the purpose of maintaining water quality standards.

(2) The term "wading pool" shall mean any artificial pool of water for wading purposes.

(3) The term "spray pool" shall mean a pool or artificially constructed depression for use by children, into

which water is sprayed but is not allowed to pond in the bottom of the pool.

(4) The term "health officer" shall mean the city, county or district health officer.

(5) The term "director" shall mean the director of health of the state of Washington.

(6) The term "public pool" shall include any swimming pool owned or operated by the state of Washington or any of its political subdivisions or is a pool generally available to the general public upon the payment of a specific admission charge for the use of the same, and shall include pools maintained by hotels, motels or private clubs as an additional facility for members or guests where the same is fifteen hundred square feet or more in surface area.

(7) The term "semipublic pool" shall mean a pool provided by a hotel, motel or private club as an additional facility for members or guests where the same is less than fifteen hundred square feet in surface area.

(8) The term "private pool" shall mean a swimming pool, wading pool or spray pool maintained by an individual for the use of his family and friends. [1957 c 57 § 1.]

70.90.020 Construction, alteration—Plans and specifications to be approved by director. No municipality, person, firm or corporation shall construct a public or semipublic swimming pool, nor make changes in any public or semipublic swimming pool already built, or in the appurtenances thereof, until the plans and specifications therefor shall first have been submitted to and received the approval of the director. The director may stipulate as a condition of such approval such modifications or conditions not inconsistent with this chapter as the public health or safety may require. [1957 c 57 § 2.]

70.90.030 Rules and regulations. The director is authorized and empowered to make any rules and regulations not inconsistent herewith relative to water quality, disinfection, sanitation and sanitary control of public and semipublic swimming pools, wading pools and spray pools as are reasonably necessary to the protection of the public health and safety: *Provided*, That such regulations shall not require the installation of overflow troughs or scum gutters in semipublic pools provided other suitable devices of suitable number, type and location, as prescribed by the director, shall be provided therefor, nor shall said regulations require recirculation equipment producing a complete turnover of the contents of semipublic pools at a greater rate than once every twelve hours. [1957 c 57 § 3.]

70.90.040 Enforcement—Penalty. The health officer of every city, county or district is empowered to enforce the provisions of this chapter and the needful rules and regulations promulgated by the director pursuant hereto, and the violation of any such rules or regulations shall be a misdemeanor punishable by a fine of not more than three hundred dollars. [1957 c 57 § 4.]

70.90.900 Application of chapter. The provisions of this chapter shall not apply to private pools. [1957 c 57 § 5.]

Chapter 70.92

PUBLIC BUILDINGS—PROVISION FOR AGED AND HANDICAPPED

Sections

- 70.92.100 Legislative intent.
- 70.92.110 Buildings and structures to which standards and specifications apply—Exemptions.
- 70.92.120 Handicap symbol—Display—Signs showing location of entrance for handicapped.
- 70.92.130 Definitions.
- 70.92.140 Minimum standards for facilities—Adoption—Facilities to be included.
- 70.92.150 Standards adopted by other states to be considered—Majority vote.
- 70.92.160 Waiver from compliance with standards.

American national standard specifications for making buildings and facilities accessible to and usable by handicapped persons: RCW 19.27.030(5).

70.92.100 Legislative intent. It is the intent of the legislature that, notwithstanding any law to the contrary, plans and specifications for the erection of buildings through the use of public or private funds shall make special provisions for elderly or physically disabled persons. [1975 1st ex.s. c 110 § 1.]

70.92.110 Buildings and structures to which standards and specifications apply—Exemptions. The standards and specifications adopted under this chapter shall, as provided in this section, apply to buildings, structures, or portions thereof used primarily for group A through group H occupancies, as defined in the Washington state building code. All such buildings, structures, or portions thereof, which are constructed, substantially remodeled, or substantially rehabilitated after July 1, 1976, shall conform to the standards and specifications adopted under this chapter: *Provided*, That the following buildings, structures, or portions thereof shall be exempt from this chapter:

(1) Buildings, structures, or portions thereof for which construction contracts have been awarded prior to July 1, 1976;

(2) Any building, structure, or portion thereof in respect to which the administrative authority deems, after considering all circumstances applying thereto, that full compliance is impracticable: *Provided*, That, such a determination shall be made no later than at the time of issuance of the building permit for the construction, remodeling, or rehabilitation: *Provided further*, That the board of appeals provided for in section 204 of the Uniform Building Code shall have jurisdiction to hear and decide appeals from any decision by the administrative authority regarding a waiver or failure to grant a waiver from compliance with the standards adopted pursuant to RCW 70.92.100 through 70.92.160. The provisions of the Uniform Building Code regarding the appeals process shall govern the appeals herein;

(3) Any building or structure used solely for dwelling purposes and which contains not more than two dwelling units;

(4) Any building or structure not used primarily for group A through group H occupancies as set forth in the Washington state building code; or

(5) Apartment houses with ten or fewer units. [1975 1st ex.s. c 110 § 2.]

70.92.120 Handicap symbol—Display—Signs showing location of entrance for handicapped. All buildings built in accordance with the standards and specifications provided for in this chapter, and containing facilities that are in compliance therewith, shall display the following symbol which is known as the international symbol of access.



Such symbol shall be white on a blue background and shall indicate the location of facilities designed for the physically disabled or elderly. When a building contains an entrance other than the main entrance which is ramped or level for use by physically disabled or elderly persons, a sign with the symbol showing its location shall be posted at or near the main entrance which shall be visible from the adjacent public sidewalk or way. [1975 1st ex.s. c 110 § 3.]

70.92.130 Definitions. As used in this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Administrative authority" means the building department of each county, city, or town of this state;

(2) "Substantially remodeled or substantially rehabilitated" means any alteration or restoration of a building or structure within any twelve-month period, the cost of which exceeds sixty percent of the currently appraised value of the particular building or structure;

(3) "Council" means the state building code advisory council. [1975 1st ex.s. c 110 § 4.]

70.92.140 Minimum standards for facilities—Adoption—Facilities to be included. The state building code advisory council shall adopt minimum standards by rule and regulation for the provision of facilities in buildings and structures to accommodate the elderly, as well as physically disabled persons, which shall include but not be limited to standards for:

- (1) Ramps;
- (2) Doors and doorways;
- (3) Stairs;
- (4) Floors;
- (5) Entrances;
- (6) Toilet rooms and paraphernalia therein;
- (7) Water fountains;
- (8) Public telephones;
- (9) Elevators;
- (10) Switches and levers for the control of light, ventilation, windows, mirrors, etc.;
- (11) Plaques identifying such facilities;
- (12) Turnstiles and revolving doors;
- (13) Kitchen facilities, where appropriate;
- (14) Grading of approaches to entrances;
- (15) Parking facilities;
- (16) Seating facilities, where appropriate, in buildings where people normally assemble. [1975 1st ex.s. c 110 § 5.]

70.92.150 Standards adopted by other states to be considered—Majority vote. The council in adopting these minimum standards shall consider minimum standards adopted by both law and rule and regulation in other states: *Provided*, That no standards adopted by the council pursuant to RCW 70.92.100 through 70.92.160 shall take effect until July 1, 1976. The council shall adopt such standards by majority vote pursuant to the provisions of chapter 34.04 RCW. [1975 1st ex.s. c 110 § 6.]

70.92.160 Waiver from compliance with standards. The administrative authority of any jurisdiction may grant a waiver from compliance with any standard adopted hereunder for a particular building or structure if it determines that compliance with the particular standard is impractical: *Provided*, That such a determination shall be made no later than at the time of issuance of the building permit for the construction, remodeling, or rehabilitation: *Provided further*, That the board of appeals provided for in section 204 of the Uniform Building Code shall have jurisdiction to hear and decide appeals from any decision by the administrative authority regarding a waiver or failure to grant a waiver from compliance with the standards adopted pursuant to RCW 70.92.100 through 70.92.160. The provisions of the Uniform Building Code regarding the appeals process shall govern the appeals herein. [1975 1st ex.s. c 110 § 7.]

Chapter 70.93 MODEL LITTER CONTROL ACT

Sections

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70.93.910 Alternative to Initiative 40—Placement on ballot—Force and effect of chapter.

Reviser's note: Throughout chapter 70.93 RCW, the term "this 1971 amendatory act" has been changed to "this chapter"; "this 1971 amendatory act" [1971 ex.s. c 307] consists of this chapter, the 1971 amendment to RCW 46.61.655 and the repeal of RCW 9.61.120, 9.66.060, 9.66.070 and 46.61.650.

Solid waste management, recovery and recycling: Chapter 70.95 RCW.

70.93.010 Legislative findings. Recognizing the rapid population growth of the state of Washington and the ever increasing mobility of its people, as well as the fundamental need for a healthful, clean and beautiful environment; and further recognizing that the proliferation and accumulation of litter discarded throughout this state impairs this need and constitutes a public health hazard; and further recognizing that there is an imperative need to anticipate, plan for, and accomplish effective litter control, there is hereby enacted this "Model Litter Control Act". [1971 ex.s. c 307 § 1.]

70.93.020 Declaration of purpose. The purpose of this chapter is to accomplish litter control throughout this state by delegating to the department of ecology the authority to conduct a permanent and continuous program to control and remove litter from this state to the maximum practical extent possible. This program shall include the compatible goal of recovery of recyclable materials to conserve energy and natural resources wherever practicable. Every other department of state government and all local governmental units and agencies of this state shall cooperate with the department of ecology in the administration and enforcement of this chapter. The intent of this chapter is to add to and to coordinate existing litter control and removal efforts and not terminate or supplant such efforts. [1975-'76 2nd ex.s. c 41 § 7; 1971 ex.s. c 307 § 2.]

Severability—1975-76 2nd ex.s. c 41: See RCW 70.95.911.
Solid waste disposal, recovery and recycling: Chapter 70.95 RCW.

70.93.030 Definitions. As used in this chapter unless the context indicates otherwise:

- (1) "Department" means the department of ecology;
- (2) "Director" means the director of the department of ecology;
- (3) "Disposable package or container" means all packages or containers defined as such by rules and regulations adopted by the department of ecology;
- (4) "Litter" means all waste material including but not limited to disposable packages or containers thrown or deposited as herein prohibited but not including the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing;
- (5) "Litter bag" means a bag, sack, or other container made of any material which is large enough to serve as a receptacle for litter inside the vehicle or watercraft of any person. It is not necessarily limited to the state approved litter bag but must be similar in size and capacity;
- (6) "Litter receptacle" means those containers adopted by the department of ecology and which may be standardized as to size, shape, capacity, and color and which shall bear the state anti-litter symbol, as well as any other receptacles suitable for the depositing of litter;
- (7) "Person" means any industry, public or private corporation, copartnership, association, firm, individual, or other entity whatsoever;
- (8) "Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks;
- (9) "Watercraft" means any boat, ship, vessel, barge, or other floating craft;
- (10) "Public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests. [1971 ex.s. c 307 § 3.]

70.93.040 Administrative procedure act—Application to chapter. In addition to his other powers and duties, the director shall have the power to propose and to adopt pursuant to chapter 34.04 RCW rules and regulations necessary to carry out the provisions, purposes, and intent of this chapter. [1971 ex.s. c 307 § 4.]

70.93.050 Enforcement of chapter. The director may designate trained employees of the department to be vested with police powers to enforce and administer the provisions of this chapter and all rules and regulations adopted thereunder. The director shall also have authority to contract with other state and local governmental agencies having law enforcement capabilities for services and personnel reasonably necessary to carry out the enforcement provisions of this chapter. In addition, state patrol officers, game protectors and deputy game protectors, fire wardens, deputy fire wardens and forest rangers, sheriffs and marshals and their deputies, and

police officers, and those employees of the department of ecology and the parks and recreation commission vested with police powers all shall enforce the provisions of this chapter and all rules and regulations adopted thereunder and are hereby empowered to issue citations to and/or arrest without warrant, persons violating any provision of this chapter or any of the rules and regulations adopted hereunder. All of the foregoing enforcement officers may serve and execute all warrants, citations, and other process issued by the courts in enforcing the provisions of this chapter and rules and regulations adopted hereunder. In addition, mailing by registered mail of such warrant, citation, or other process to his last known place of residence shall be deemed as personal service upon the person charged. [1971 ex.s. c 307 § 5.]

70.93.060 Littering prohibited—Penalties. No person shall throw, drop, deposit, discard, or otherwise dispose of litter upon any public property in the state or upon private property in this state not owned by him or in the waters of this state whether from a vehicle or otherwise including but not limited to any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley except:

- (1) When such property is designated by the state or by any of its agencies or political subdivisions for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose;
- (2) Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of said private or public property or waters.

Any person violating the provisions of this section shall be guilty of a misdemeanor and the fine or bail forfeiture for such violation shall not be less than ten dollars for each offense, and, in addition thereto, in the sound discretion of any court in which conviction is obtained, such person may be directed by the judge to pick up and remove from any public place or any private property with prior permission of the legal owner upon which it is established by competent evidence that such person has deposited litter, any or all litter deposited thereon by anyone prior to the date of execution of sentence. [1971 ex.s. c 307 § 6.]

70.93.070 Collection of fines and forfeitures. The director shall prescribe the procedures for the collection of fines and bail forfeitures including the imposition of additional penalty charges for late payment of fines. [1971 ex.s. c 307 § 7.]

70.93.080 Notice to public—Contents of chapter—Required. Pertinent portions of this chapter shall be posted along the public highways of this state and in all campgrounds and trailer parks, at all entrances to state parks, forest lands, and recreational areas, at all public beaches, and at other public places in this state where persons are likely to be informed of the existence and content of this chapter and the penalties for violating its provisions. [1971 ex.s. c 307 § 8.]

70.93.090 Litter receptacles—Use of anti-litter symbol—Distribution—Placement—Violations—Penalties. The department shall design and the director shall adopt by rule or regulation one or more types of litter receptacles which are reasonably uniform as to size, shape, capacity and color, for wide and extensive distribution throughout the public places of this state. Each such litter receptacle shall bear an anti-litter symbol as designed and adopted by the department. In addition, all litter receptacles shall be designed to attract attention and to encourage the depositing of litter.

Litter receptacles of the uniform design shall be placed along the public highways of this state and at all parks, campgrounds, trailer parks, drive-in restaurants, gasoline service stations, tavern parking lots, shopping centers, grocery store parking lots, parking lots of major industrial firms, marinas, boat launching areas, boat moorage and fueling stations, public and private piers, beaches and bathing areas, and such other public places within this state as specified by rule or regulation of the director adopted pursuant to chapter 34.04 RCW. The number of such receptacles required to be placed as specified herein shall be determined by a formula related to the need for such receptacles.

It shall be the responsibility of any person owning or operating any establishment or public place in which litter receptacles of the uniform design are required by this section to procure and place such receptacles at their own expense on the premises in accord with rules and regulations adopted by the department.

Any person who fails to place such litter receptacles on the premises in the numbers required by rule or regulation of the department, violating the provisions of this section or rules or regulations adopted thereunder shall be subject to a fine of ten dollars for each day of violation. [1971 ex.s. c 307 § 9.]

70.93.100 Litter bags—Design and distribution by department authorized—Violations—Penalties. The department may design and produce a litter bag bearing the state-wide anti-litter symbol and a statement of the penalties prescribed herein for littering in this state. As soon as possible after May 21, 1971, such litter bags may be distributed by the department of motor vehicles at no charge to the owner of every licensed vehicle in this state at the time and place of license renewal. The department of ecology may make such litter bags available to the owners of water craft in this state and may also provide such litter bags at no charge at points of entry into this state and at visitor centers to the operators of incoming vehicles and watercraft. The owner of any vehicle or watercraft who fails to keep and use a litter bag in his vehicle or watercraft shall be guilty of a violation of this section and shall be subject to a fine as provided in this chapter. [1971 ex.s. c 307 § 10.]

70.93.110 Removal of litter—Responsibility. Responsibility for the removal of litter from receptacles placed at parks, beaches, campgrounds, trailer parks, and other public places shall remain upon those state and local agencies performing litter removal. Removal of litter from litter receptacles placed on private property

which is used by the public shall remain the responsibility of the owner of such private property. [1971 ex.s. c 307 § 11.]

70.93.120 Litter assessment—Imposed—Amount—Collection. There is hereby levied and there shall be collected by the department of revenue from every person engaging within this state in business as a manufacturer and/or making sales at wholesale and/or making sales at retail, an annual litter assessment equal to the value of products manufactured and sold within this state, including by-products, multiplied by one and one-half hundredths of one percent in the case of manufacturers, and equal to the gross proceeds of the sales of the business within this state multiplied by one and one-half hundredths of one percent in the case of sales at wholesale and/or at retail. [1971 ex.s. c 307 § 12.]

70.93.130 Litter assessment—Application to certain products. Because it is the express purpose of this chapter to accomplish effective litter control within the state of Washington and because it is a further purpose of this chapter to allocate a portion of the cost of administering it to those industries whose products including the packages, wrappings, and containers thereof, are reasonably related to the litter problem, in arriving at the amount upon which the assessment is to be calculated only the value of products or the gross proceeds of sales of products falling into the following categories shall be included:

- (1) Food for human or pet consumption.
- (2) Groceries.
- (3) Cigarettes and tobacco products.
- (4) Soft drinks and carbonated waters.
- (5) Beer and other malt beverages.
- (6) Wine.
- (7) Newspapers and magazines.
- (8) Household paper and paper products.
- (9) Glass containers.
- (10) Metal containers.
- (11) Plastic or fiber containers made of synthetic material.
- (12) Cleaning agents and toiletries.
- (13) Nondrug drugstore sundry products. [1971 ex.s. c 307 § 13.]

70.93.140 Litter assessment—Powers and duties of department of revenue—Guidelines. The department of revenue by rule and regulation made pursuant to chapter 34.04 RCW may, if such is required, define the categories (1) through (13) as set forth in RCW 70.93.130. In making any such definitions, the department of revenue shall be guided by the following standards:

- (1) It is the purpose of this chapter to accomplish effective control of litter within this state;
- (2) It is the purpose of this chapter to allocate a portion of the cost of administration of this chapter to those industries manufacturing and/or selling products and the packages, wrappings, or containers thereof which are reasonably related to the litter problem within this state. [1971 ex.s. c 307 § 14.]

70.93.150 "Sold within this state"—"Sales of the business within this state"—Defined. "Sold within this state" or "sales of the business within this state" as used in RCW 70.93.120 shall mean all sales of retailers engaged in business within this state and all sales of products for use or consumption within this state in the case of manufacturers and wholesalers. [1971 ex.s. c 307 § 15.]

70.93.160 Application of chapters 82.04 and 82.32 RCW to chapter—Exceptions. All of the provisions of chapters 82.04 and 82.32 RCW such as they apply are incorporated herein except RCW 82.04.220 through 82.04.290, and 82.04.330. [1971 ex.s. c 307 § 16.]

70.93.170 Litter assessment—Exemptions. The litter assessment herein provided for shall not be applied to the value of products or gross proceeds of the sales of any animal, bird, or insect or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom, if the person performs only the growing or raising function of such animal, bird, or insect. In all other instances, the assessment shall be applied. [1971 ex.s. c 307 § 17.]

70.93.180 Litter control account—Creation—Composition. There is hereby created an account within the general fund to be known as the "litter control account". All assessments, fines, bail forfeitures, and other funds collected or received pursuant to this chapter shall be deposited in the litter control account and used for the administration and implementation of this chapter. [1971 ex.s. c 307 § 18.]

70.93.190 Litter control account—Distribution of funds—Authorization. The department shall allocate funds annually for the study of available research and development data in the field of the control, removal, disposal, recovery, and recycling of litter. The department is also authorized to study methods for implementation in this state of said research and development. In addition, such fund may be used for the development of public educational programs concerning the litter problem. Grants shall be made available for these purposes to those persons and local governments or agencies thereof deemed appropriate and qualified by the director. [1975-'76 2nd ex.s. c 41 § 8; 1971 ex.s. c 307 § 19.]

Severability—1975-'76 2nd ex.s. c 41: See RCW 70.95.911.

70.93.200 Department of ecology—Administration of anti-litter program—Guidelines. In addition to the foregoing, the department of ecology shall:

(1) Serve as the coordinating agency between the various industry organizations seeking to aid in the anti-litter effort;

(2) Recommend to the governing bodies of all local governments that they adopt ordinances similar to the provisions of this chapter;

(3) Cooperate with all local governments to accomplish coordination of local anti-litter efforts;

(4) Encourage, organize, and coordinate all voluntary local anti-litter campaigns seeking to focus the attention

of the public on the programs of this state to control and remove litter;

(5) Investigate the availability of, and apply for funds available from any private or public source to be used in the program outlined in this chapter. [1971 ex.s. c 307 § 20.]

70.93.210 Anti-litter campaign—Industrial cooperation requested. To aid in the state-wide anti-litter campaign, the state legislature requests that the various industry organizations which are active in anti-litter efforts provide active cooperation with the department of ecology so that additional effect may be given to the anti-litter campaign of the state of Washington. [1971 ex.s. c 307 § 21.]

70.93.230 Violations of chapter—Penalties. Every person convicted of a violation of this chapter for which no penalty is specially provided for shall be punished by a fine of not more than ten dollars for each such violation. [1971 ex.s. c 307 § 23.]

70.93.900 Severability—1971 ex.s. c 307. If any provision of this 1971 amendatory 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 is not affected. [1971 ex.s. c 307 § 25.]

70.93.910 Alternative to Initiative 40—Placement on ballot—Force and effect of chapter. This 1971 amendatory act constitutes an alternative to Initiative 40. The secretary of state is directed to place this 1971 amendatory act on the ballot in conjunction with Initiative 40 at the next general election.

This 1971 amendatory act shall continue in force and effect until the secretary of state certifies the election results on this 1971 amendatory act. If affirmatively approved at the general election, this 1971 amendatory act shall continue in effect thereafter. [1971 ex.s. c 307 § 27.]

Reviser's note: Chapter 70.93 RCW [1971 ex.s. c 307] was approved and validated at the November 7, 1972 general election as Alternative Measure 40B.

Chapter 70.94

WASHINGTON CLEAN AIR ACT

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Tax exemptions and credits for air pollution control facilities: Chapter 82.34 RCW.

70.94.011 Declaration of public policies and purpose—Division of state into two major areas. It is declared to be the public policy of the state to secure and maintain such levels of air quality as will protect human health and safety and comply with the requirements of the federal clean air act, and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of its inhabitants, promote the economic and social development of the state, and facilitate the enjoyment of the natural attractions of the state. The problems and effects of air pollution are frequently regional and interjurisdictional in nature, and are dependent upon the existence of urbanization and industrialization in areas having common topography and recurring weather conditions conducive to the buildup of air contaminants.

It is also declared as public policy that regional air pollution control programs are to be encouraged and supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

It is also declared to be the public policy of the state to provide for the people of the populous metropolitan regions in the state the means of obtaining air pollution control not adequately provided by existing agencies of local government. For reasons of the present and potential dramatic growth in population, urbanization, and industrialization, the special problem of air resource management, encompassing both corrective and preventive measures for the control of air pollution cannot be adequately met by the individual towns, cities, and counties of many metropolitan regions.

In addition, the state is divided into two major areas, each having unique characteristics as to natural climatic and topographic features which may result in the different potentials for the accumulation and buildup of air contaminant concentrations. These two major areas are the area lying west of the Cascade Mountain crest and the area lying east of the Cascade Mountain crest. Within each of these major areas are regions which, because of the climate and topography and present and potential urbanization and industrial development may, through definitive evaluation be classed as regional air pollution areas.

To these ends it is the purpose of this chapter to provide for a coordinated state-wide program of air pollution prevention and control, for an appropriate distribution of responsibilities between the state, regional, and local units of government, and for cooperation across jurisdictional lines in dealing with problems of air pollution. [1973 1st ex.s. c 193 § 1; 1969 ex.s. c 168 § 1; 1967 c 238 § 1.]

70.94.025 Pollution control hearings board of the state of Washington as affecting chapter 70.94 RCW. See chapter 43.21B RCW.

70.94.030 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) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.

(2) "Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property.

(3) "Person" means and includes an individual, firm, public or private corporation, association, partnership, political subdivision, municipality or government agency.

(4) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(5) "Board" means the board of directors of an authority.

(6) "Control officer" means the air pollution control officer of any authority.

(7) "State board" means the state air pollution control board, or any department or agency which by law shall succeed to its powers, duties and functions.

(8) "Emission" means a release into the outdoor atmosphere of air contaminants.

(9) "Department" means the state department of health.

(10) "Ambient air" means the surrounding outside air.

(11) "Multicounty authority" means an authority which consists of two or more counties.

(12) "Emission standard" means a limitation on the release of a contaminant or multiple contaminants into the ambient air.

(13) "Air quality standard" means an established concentration, exposure time and frequency of occurrence of a contaminant or multiple contaminants in the ambient air which shall not be exceeded.

(14) "Air quality objective" means the concentration and exposure time of a contaminant or multiple contaminants in the ambient air below which undesirable effects will not occur. [1969 ex.s. c 168 § 2; 1967 ex.s. c 61 § 1; 1967 c 238 § 2; 1957 c 232 § 3.]

70.94.040 Causing or permitting air pollution unlawful—Exception. Except where specified in a variance permit, as provided in RCW 70.94.181, it shall be unlawful for any person knowingly to cause air pollution or knowingly permit it to be caused in violation of this chapter, or of any ordinance, resolution, rule or regulation validly promulgated hereunder. [1967 c 238 § 3; 1957 c 232 § 4.]

70.94.053 Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations—Reports to legislature. (1) In each county of the state there is hereby created an air pollution control authority, which shall bear the name of the county within which it is located. The boundaries of each authority shall be coextensive with the boundaries

of the county within which it is located. An authority shall include all incorporated and unincorporated areas of the county within which it is located.

(2) All authorities which are presently or may hereafter be within counties of the first class, class A or class AA, are hereby designated as activated authorities and shall carry out the duties and exercise the powers provided in this chapter. Those authorities hereby activated which encompass contiguous counties located in one or the other of the two major areas determined in RCW 70.94.011 are declared to be and directed to function as a multicounty authority.

(3) Except as provided in RCW 70.94.232, all other air pollution control authorities are hereby designated as inactive authorities.

(4) The boards of those authorities designated as activated authorities by this chapter shall be comprised of such appointees and/or county commissioners as is provided in RCW 70.94.100. The first meeting of the boards of those authorities designated as activated authorities by this chapter shall be on or before sixty days after June 8, 1967.

(5) The state board and the department of health are directed to conduct the necessary evaluations and delineate appropriate air pollution regions throughout the state, taking into consideration:

(a) The natural climatic and topographic features affecting the potential for buildup of air contaminant concentrations.

(b) The degree of urbanization and industrialization and the existence of activities which are likely to cause air pollution.

(c) The county boundaries as related to the air pollution regions and the practicality of administering air pollution control programs.

The state board and the department are directed to report to the 1969 and succeeding legislative sessions with respect to the further need for activating or combining air pollution control authorities. [1967 c 238 § 4.]

70.94.055 Air pollution control authority may be activated by certain counties, when. The board of county commissioners of any county other than a first class, class A or class AA county may activate an air pollution control authority following a public hearing on its own motion, or upon a filing of a petition signed by one hundred property owners within the county. If the board of county commissioners determines as a result of the public hearing that:

(1) Air pollution exists or is likely to occur; and

(2) The city or town ordinances or county resolutions, or their enforcement, are inadequate to prevent or control air pollution, they shall by resolution activate an air pollution control authority or combine with a contiguous county or counties to form a multicounty air pollution control authority. [1967 c 238 § 5.]

70.94.057 Multicounty authority may be formed by contiguous counties—Name. The boards of county commissioners of two or more contiguous counties may, by joint resolution, combine to form a multicounty air pollution control authority. Boundaries of such authority

shall be coextensive with the boundaries of the counties forming the authority.

The name of the multicounty authority shall bear the names of the counties making up such multicounty authority or a name adopted by the board of such multicounty authority. [1967 c 238 § 6.]

70.94.068 Merger of active and inactive authorities to form multicounty or regional authority—Procedure. The respective boards of county commissioners of two or more contiguous counties may merge any combination of their several inactive or activated authorities to form one activated multicounty authority. Upon a determination that the purposes of this chapter will be served by such merger, each board of county commissioners may adopt the resolution providing for such merger. Such resolution shall become effective only when a similar resolution is adopted by the other contiguous county or counties comprising the proposed authority. The boundaries of such authority shall be coextensive with the boundaries of the counties within which it is located. [1969 ex.s. c 168 § 3; 1967 c 238 § 11.]

70.94.069 Merger of active and inactive authorities to form multicounty or regional authority—Reorganization of board of directors—Rules and regulations. Whenever there occurs a merger of an inactive authority with an activated authority or authorities, or of two activated authorities to form a multicounty authority, the board of directors shall be reorganized as provided in RCW 70.94.100, 70.94.110, and 70.94.120.

In the case of the merger of two or more activated authorities the rules and regulations of each authority shall continue in effect and shall be enforced within the jurisdiction of each until such time as the board of directors adopts rules and regulations applicable to the newly formed multicounty authority.

In the case of the merger of an inactive authority with an activated authority or authorities, upon approval of such merger by the board or boards of county commissioners of the county or counties comprising the existing activated authority or authorities, the rules and regulations of the activated authority or authorities shall remain in effect until superseded by the rules and regulations of the multicounty authority as provided in RCW 70.94.230. [1969 ex.s. c 168 § 4; 1967 c 238 § 12.]

70.94.070 Resolutions activating authorities—Contents—Filings—Effective date of operation. The resolution or resolutions activating an air pollution authority shall specify the name of the authority and participating political bodies; the authority's principal place of business; the territory included within it; and the effective date upon which such authority shall begin to transact business and exercise its powers. In addition, such resolution or resolutions may specify the amount of money to be contributed annually by each political subdivision, or a method of dividing expenses of the air pollution control program. Upon the adoption of a resolution or resolutions calling for the activation of an authority or the merger of an inactive or activated

authority or several activated authorities to form a multicounty authority. the governing body of each shall cause a certified copy of each such ordinance or resolution to be filed in the office of the secretary of state of the state of Washington. From and after the date of filing with the secretary of state a certified copy of each such resolution, or resolutions, or the date specified in such resolution or resolutions, whichever is later, the authority may begin to function and may exercise its powers.

Any authority activated by the provisions of this chapter shall cause a certified copy of all information required by this section to be filed in the office of the secretary of state of the state of Washington. [1969 ex.s. c 168 § 5; 1967 c 238 § 13; 1957 c 232 § 7.]

70.94.081 Powers and duties of authorities. An activated authority shall be deemed a municipal corporation; have right to perpetual succession; adopt and use a seal; may sue and be sued in the name of the authority in all courts and in all proceedings; and, may receive, account for, and disburse funds, employ personnel, and acquire or dispose of any interest in real or personal property within or without the authority in the furtherance of its purposes. [1969 ex.s. c 168 § 6; 1967 c 238 § 14.]

70.94.091 Excess tax levy authorized—Election, procedure, expense. An activated authority shall have the power to levy additional taxes in excess of the constitutional and/or statutory tax limitations for any of the authorized purposes of such activated authority, not in excess of twenty-five cents per thousand dollars of assessed value a year when authorized so to do by the electors of such authority by a three-fifths majority of those voting on the proposition at a special election, to be held in the year in which the levy is made, in the manner set forth in Article VII, section 2 (a) of the Constitution of this state, as amended by Amendment 59 and as thereafter amended. Nothing herein shall be construed to prevent holding the foregoing special election at the same time as that fixed for a general election. The expense of all special elections held pursuant to this section shall be paid by the authority. [1973 1st ex.s. c 195 § 84; 1969 ex.s. c 168 § 7; 1967 c 238 § 15.]

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

70.94.092 Fiscal year—Adoption of budget—Contents—"Supplemental income"—Emergency expenditures. Notwithstanding the provisions of RCW 1.16.030, the budget year of each activated authority shall be the fiscal year beginning July 1st and ending on the following June 30th. The current budget year shall be terminated June 30, 1975, and a budget for the fiscal year beginning July 1, 1975, shall be adopted pursuant to this section as now or hereafter amended. On or before the fourth Monday in June of each year, each activated authority shall adopt a budget for the following fiscal year. The budget shall contain an estimate of all revenues to be collected during the following budget year, including any surplus funds remaining unexpended from the preceding year. The remaining funds required

to meet budget expenditures, if any, shall be designated as "supplemental income" and shall be obtained from the component cities, towns, and counties in the manner provided in this chapter. The affirmative vote of three-fourths of all members of the board shall be required to authorize emergency expenditures. [1975 1st ex.s. c 106 § 1; 1969 ex.s. c 168 § 8; 1967 c 238 § 16.]

70.94.093 Methods for determining proportion of supplemental income to be paid by component cities, towns and counties—Payment. (1) Each component city or town shall pay such proportion of the supplemental income to the authority as determined by either one of the following prescribed methods or by a combination of fifty percent of one and fifty percent of the other as provided in subsection (1)(c) of this section:

(a) Each component city or town shall pay such proportion of the supplemental income as the assessed valuation of property within its limits bears to the total assessed valuation of taxable property within the activated authority.

(b) Each component city or town shall pay such proportion of the supplemental income as the total population of such city or town bears to the total population of the activated authority. The population of the city or town shall be determined by the most recent census, estimate or survey by the federal bureau of census or any state board or commission authorized to make such a census, estimate or survey.

(c) A combination of the methods prescribed in (a) and (b) of this subsection: *Provided*, That such combination shall be of fifty percent of the method prescribed in (a) of this subsection and fifty percent of the method prescribed in (b) of this subsection.

(2) Each component county shall pay such proportion of such supplemental income to the authority as determined by either one of the following prescribed methods or by a combination of fifty percent of one and fifty percent of the other as prescribed in subsection (2)(c) of this section:

(a) Each component county shall pay such proportion of such supplemental income as the assessed valuation of the property within the unincorporated area of such county lying within the activated authority bears to the total assessed valuation of taxable property within the activated authority.

(b) Each component county shall pay such proportion of the supplemental income as the total population of the unincorporated area of such county bears to the total population of the activated authority. The population of the county shall be determined by the most recent census, estimate or survey by the federal bureau of census or any state board or commission authorized to make such a census, estimate or survey.

(c) A combination of the methods prescribed in (a) and (b) of this subsection: *Provided*, That such combination shall be of fifty percent of the method prescribed in (a) of this subsection and fifty percent of the method prescribed in (b) of this subsection.

(3) In making such determination of the assessed valuation of property in the component cities, towns and counties, the board shall use the last available assessed

valuations. The board shall certify to each component city, town and county, prior to the fourth Monday in June of each year, the share of the supplemental income to be paid by such component city, town or county for the next calendar year. The latter shall then include such amount in its budget for the ensuing calendar year, and during such year shall pay to the activated authority, in equal quarterly installments, the amount of its supplemental share. [1969 ex.s. c 168 § 9; 1967 c 238 § 17.]

70.94.094 Designation of authority treasurer and auditor—Duties. The treasurer of each component city, town or county shall create a separate fund into which shall be paid all money collected from taxes or from any other available sources, levied by or obtained for the activated authority on property or on any other available sources in such city, town or county and such money shall be forwarded quarterly by the treasurer of each such city, town or county to the treasurer of the county designated by the board as the authority treasurer. The treasurer of the county so designated to serve as treasurer of the authority shall establish and maintain such funds as may be authorized by the board. Money shall be disbursed from such funds upon warrants drawn by the auditor of the county designated by the board as the authority auditor as authorized by the board. The respective county shall be reimbursed by the board for services rendered by the treasurer and auditor of the respective county in connection with the receipt and disbursement of such funds. [1969 ex.s. c 168 § 10; 1967 c 238 § 18.]

70.94.095 Assessed valuation of taxable property, certification by county assessors. It shall be the duty of the assessor of each component county to certify annually to the board the aggregate assessed valuation of all taxable property in all incorporated and unincorporated areas situated in any activated authority as the same appears from the last assessment roll of his county. [1969 ex.s. c 168 § 11; 1967 c 238 § 19.]

70.94.096 Authorization to borrow money. An activated authority shall have the power when authorized by a majority of all members of the board to borrow money from any component city, town or county and such cities, towns and counties are hereby authorized to make such loans or advances on such terms as may be mutually agreed upon by the board and the legislative bodies of any such component city, town or county to provide funds to carry out the purposes of the activated authority. [1969 ex.s. c 168 § 12; 1967 c 238 § 20.]

70.94.097 Special air pollution studies—Contracts for conduct of. In addition to paying its share of the supplemental income of the activated authority, each component city, town, or county shall have the power to contract with such authority and expend funds for the conduct of special studies, investigations, plans, research, advice, or consultation relating to air pollution and its causes, effects, prevention, abatement, and control as such may affect any area within the boundaries of the

component city, town, or county, and which could not be performed by the authority with funds otherwise available to it. Any component city, town or county which contracts for the conduct of such special air pollution studies, investigations, plans, research, advice or consultation with any entity other than the activated authority shall require that such an entity consult with the activated authority. [1975 1st ex.s. c 106 § 2.]

70.94.100 Board of directors of authority—Composition—Term. (1) The governing body of each authority shall be known as the board of directors.

(2) In the case of an authority comprised of one county the board shall be comprised of two appointees of the city selection committee as hereinafter provided, at least one of whom shall represent the city having the most population in the county, and two county commissioners to be designated by the board of county commissioners. In the case of an authority comprised of two or three counties, the board shall be comprised of one appointee of the city selection committee of each county as hereinafter provided, who shall represent the city having the most population in such county, and one county commissioner from each county to be designated by the board of county commissioners of each county making up the authority. In the case of an authority comprised of four or five counties, the board shall be comprised of one appointee of the city selection committee of each county as hereinafter provided who shall represent the city having the most population in such county, and one county commissioner from each county to be designated by the board of county commissioners of each county making up the authority. In the case of an authority comprised of six or more counties, the board shall be comprised of one county commissioner from each county to be designated by the board of county commissioners of each county making up the authority, and one appointee from each city with over one hundred thousand population to be appointed by the mayor and city council of such city.

(3) If the board of an authority otherwise would consist of an even number, the members selected as above provided shall agree upon and elect an additional member who shall be either a member of the governing body of one of the towns, cities or counties comprising the authority, or a private citizen residing in the authority. All board members shall hold office at the pleasure of the appointing body. [1969 ex.s. c 168 § 13; 1967 c 238 § 21; 1957 c 232 § 10.]

70.94.110 City selection committees. There shall be a separate and distinct city selection committee for each county making up an authority. The membership of such committee shall consist of the mayor of each incorporated city and town within such county. A majority of the members of each city selection committee shall constitute a quorum. [1967 c 238 § 22; 1963 c 27 § 1; 1957 c 232 § 11.]

70.94.120 City selection committees—Meetings, notice—Recording officer. The city selection committee of each county which is included within an authority

shall meet within one month after the activation of such authority for the purpose of making its initial appointments to the board of such authority and thereafter whenever necessary for the purpose of making succeeding appointments. All meetings shall be held upon at least two weeks written notice given by the county auditor to each member of the city selection committee of each county and he shall give such notice upon request of any member of such committee. A similar notice shall be given to the general public by a publication of such notice in a newspaper of general circulation in such authority. The county auditor shall act as recording officer, maintain its records and give appropriate notice of its proceedings and actions. [1969 ex.s. c 168 § 14; 1967 c 238 § 23; 1957 c 232 § 12.]

70.94.130 Board of directors—Powers, quorum, officers, compensation. The board shall exercise all powers of the authority except as otherwise provided. The board shall conduct its first meeting within thirty days after all of its members have been appointed or designated as provided in RCW 70.94.100. A majority of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect from its members a chairman and such other officers as may be necessary. Any member of the board may designate a regular alternate to serve on the board in his place with the same authority as the member when he is unable to attend. Each member of the board, or his representative, shall receive from the authority twenty-five dollars per day compensation (but not to exceed one thousand dollars per year) for each full day spent in the performance of his duties under this chapter, plus the actual and necessary expenses incurred by him in such performance. The board may appoint an executive director, and any other personnel, and shall determine their salaries, and pay same, together with any other proper indebtedness, from authority funds. [1969 ex.s. c 168 § 15; 1967 c 238 § 24; 1957 c 232 § 13.]

70.94.141 Powers and duties of city, town, county or board of activated authority. The board of any activated authority in addition to any other powers vested in them by law, shall have power to:

(1) Adopt, amend and repeal its own ordinances, resolutions, or rules and regulations, as the case may be, implementing this chapter and consistent with it, after consideration at a public hearing held in accordance with chapter 42.32 RCW.

(2) Hold hearings relating to any aspect of or matter in the administration of this chapter not prohibited by the provisions of chapter 62, Laws of 1970 ex. sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath.

(3) Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in chapter 62, Laws of 1970 ex. sess.

(4) Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere.

(5) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.

(6) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within its jurisdiction.

(7) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter.

(8) Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control.

(9) Collect and disseminate information and conduct educational and training programs relating to air pollution.

(10) Advise, consult, cooperate and contract with agencies and departments and the educational institutions of the state, other political subdivisions, industries, other states, interstate or interlocal agencies, and the United States government, and with interested persons or groups.

(11) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this chapter, ordinances, resolutions, rules and regulations in force pursuant thereto, or any other provision of law.

(12) Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for the purpose of carrying out any of the functions of this chapter. [1970 ex.s. c 62 § 56; 1969 ex.s. c 168 § 16; 1967 c 238 § 25.]

Reviser's note: (1) RCW 42.32.010 and 42.32.020 were repealed by 1971 ex.s. c 250 § 15; later enactment see chapter 42.30 RCW.

(2) "chapter 62, Laws of 1970 ex. sess.", see notes following RCW 43.21A.010.

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

70.94.142 Subpoena powers—Witnesses, expenses and mileage—Rules and regulations. In connection with the subpoena powers given in RCW 70.94.141(2):

(1) In any hearing held under RCW 70.94.181, 70.94.221 and 70.94.333, the board or the state board, and their authorized agents:

(a) shall issue a subpoena upon the request of any party and, to the extent required by rule or regulation, upon a statement or showing of general relevance and reasonable scope of the evidence sought;

(b) may issue a subpoena upon their own motion.

(2) The subpoena powers given in RCW 70.94.141(2) shall be state-wide in effect.

(3) Witnesses appearing under the compulsion of a subpoena in a hearing before the board or the state board shall be paid the same fees and mileage that are provided for witnesses in the courts of this state. Such

fees and mileage, and the cost of duplicating records required to be produced by subpoena issued upon the motion of the board or state board, shall be paid by the board or state board. Such fees and mileage, and the cost of producing records required to be produced by subpoena issued upon the request of a party, shall be paid by that party.

(4) 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 the hearing, the board or state board shall file its written report thereof and proof of service of its subpoena, in any court of competent jurisdiction in the county where the examination, hearing or investigation is being conducted. Thereupon, the court shall forthwith cause the individual to be brought before it and, upon being satisfied that the subpoena is within the jurisdiction of the board or state board and otherwise in accordance with law, shall punish him as if the failure or refusal related to a subpoena from or testimony in that court.

(5) The state board may make such rules and regulations as to the issuance of its own subpoenas as are not inconsistent with the provisions of this chapter. [1969 ex.s. c 168 § 17; 1967 c 238 § 26.]

70.94.143 Federal aid. Any authority exercising the powers and duties prescribed in this chapter may make application for, receive, administer, and expend any federal aid, under federal legislation from any agency of the federal government, for the prevention and control of air pollution or the development and administration of programs related to air pollution control and prevention, as permitted by RCW 70.94.141(12): *Provided*, That any such application shall be submitted to and approved by the state board. The state board shall adopt rules and regulations establishing standards for such approval and shall approve any such application, if it is consistent with this chapter, and any other applicable requirements of law. [1969 ex.s. c 168 § 18; 1967 c 238 § 27.]

70.94.151 Classification of air contaminant sources—Registration—Fee, when. (1) The board of any activated authority or the state board, may classify air contaminant sources, by ordinance, resolution, rule or regulation, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which cause or contribute to air pollution, and may require registration or reporting or both for any such class or classes. Classifications made pursuant to this section may be for application to the area of jurisdiction of such authority, or the state as a whole or to any designated area within the jurisdiction, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the state board or board of the authority, require registration and reporting shall register therewith and make reports containing information as may be required by

such state board or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. The state board or board may require that such registration be accompanied by a fee and may determine the amount of such fee for such class or classes: *Provided*, That the amount of the fee shall only be to compensate for the costs of administering such registration program: *Provided further*, That any such registration made with either the board or the state board shall preclude a further registration with any other board or the state board. [1969 ex.s. c 168 § 19; 1967 c 238 § 28.]

70.94.152 Notice may be required of construction of new contaminant source—Submission of plans—Approval, disapproval—Emission control. (1) The department of ecology or board of any authority may require notice of the construction, installation, or establishment of any new air contaminant sources except single family and duplex dwellings. The department of ecology or board may require such notice to be accompanied by a fee and determine the amount of such fee: *Provided*, That the amount of the fee may not exceed the cost of reviewing the plans, specifications, and other information and administering such notice: *Provided further*, That any such notice given to either the board or to the department of ecology shall preclude a further notice to be given to any other board or to the department of ecology. Within thirty days of its receipt of such notice, the department of ecology or board may require, as a condition precedent to the construction, installation, or establishment of the air contaminant source or sources covered thereby, the submission of plans, specifications, and such other information as it deems necessary in order to determine whether the proposed construction, installation, or establishment will be in accord with applicable rules and regulations in force pursuant to this chapter, and will provide all known available and reasonable methods of emission control. If on the basis of plans, specifications, or other information required pursuant to this section the department of ecology or board determines that the proposed construction, installation, or establishment will not be in accord with this chapter or the applicable ordinances, resolutions, rules, and regulations adopted pursuant thereto, or will not provide all known available and reasonable means of emission control, it shall issue an order for the prevention of the construction, installation, or establishment of the air contaminant source or sources. If on the basis of plans, specifications, or other information required pursuant to this section, the department of ecology or board determines that the proposed construction, installation, or establishment will be in accord with this chapter, and the applicable ordinances, resolutions, rules, and regulations adopted pursuant thereto and will provide all known available and reasonable methods of emission control, it shall issue an order of approval of the construction, installation, and establishment of the air contaminant source or sources, which order may provide such conditions of operation as are reasonably necessary

to assure the maintenance of compliance with this chapter and the applicable ordinances, resolutions, rules, and regulations adopted pursuant thereto.

(2) For the purposes of this chapter, addition to or enlargement or replacement of an air contaminant source, or any major alteration therein, shall be construed as construction or installation or establishment of a new air contaminant source. The determination, under subsection (1) of this section, of whether a proposed construction, installation, or establishment will be in accord with this chapter and the applicable ordinances, resolutions, rules, and regulations adopted pursuant thereto shall include a determination of whether the operation of the new air contaminant source at the location proposed will cause any ambient air quality standard to be exceeded.

(3) Nothing in this section shall be construed to authorize the department of ecology or board to require the use of emission control equipment or other equipment, machinery, or devices of any particular type, from any particular supplier, or produced by any particular manufacturer.

(4) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted pursuant to subsection (1) hereof shall be maintained in good working order.

(5) The absence of an ordinance, resolution, rule, or regulation, or the failure to issue an order pursuant to this section shall not relieve any person from his obligation to comply with any emission control requirements or with any other provision of law. [1973 1st ex.s. c 193 § 2; 1969 ex.s. c 168 § 20; 1967 c 238 § 29.]

70.94.155 Control of emissions—Schedules of compliance. Whenever any regulation relating to emission standards or other requirements for the control of emissions is adopted which provides for compliance with such standards or requirements no later than a specified time after the date of adoption of the regulation, the appropriate activated air pollution control authority or, if there be none, the department of ecology shall, by regulatory order, issue to air contaminant sources subject to the standards or requirements, schedules of compliance setting forth timetables for the achievement of compliance as expeditiously as practicable but in no case later than the time specified in the regulation. Interim dates in such schedules for the completion of steps of progress toward compliance shall be as enforceable as the final date for full compliance therein. [1973 1st ex.s. c 193 § 3.]

70.94.170 Control officer. Any activated authority which has adopted an ordinance, resolution, or valid rules and regulations as provided herein for the control and prevention of air pollution shall appoint a control officer, who shall observe and enforce the provisions of this chapter and all orders, ordinances, resolutions, or rules and regulations of such activated authority pertaining to the control and prevention of air pollution. [1969 ex.s. c 168 § 21; 1967 c 238 § 30; 1957 c 232 § 17.]

70.94.181 Variances—Application for—Considerations—Limitations—Renewals—Review.

(1) Any person who owns or is in control of any plant, building, structure, establishment, process or equipment may apply to the department of ecology where it has regulatory authority under RCW 70.94.390, 70.94.395, 70.94.410, and 70.94.420, or board for a variance from rules or regulations governing the quality, nature, duration or extent of discharges of air contaminants. The application shall be accompanied by such information and data as the department of ecology or board may require. The department of ecology or board may grant such variance, but only after public hearing or due notice, if it finds that:

(a) The emissions occurring or proposed to occur do not endanger public health or safety; and

(b) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) No variance shall be granted pursuant to this section until the department of ecology or board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(3) Any variance or renewal thereof shall be granted within the requirements of subsection (1) and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(a) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the department of ecology or board may prescribe.

(b) If the application for variance shows that there is no automobile fragmentizer within a reasonable distance of the wrecking yard for which the variance is sought, a variance will be granted for a period not to exceed three years for commercial burning of automobile hulks, subject to such conditions as the department of ecology may impose as to climatic conditions and hours during which burning of such hulks may be carried out: *Provided, however,* That any variance granted hereunder shall be of no force and effect after July 1, 1970.

(c) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the department of ecology or board is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(d) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in item (a), (b) and (c) of this subparagraph, it shall be for not more than one year.

(4) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the department of ecology or board on account of the variance, no renewal thereof shall be granted unless following a public hearing on the complaint on due notice the state board or board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the department of ecology or board shall give public notice of such application in accordance with rules and regulations of the department of ecology or board.

(5) A variance or renewal shall not be a right of the applicant or holder thereof but shall be granted at the discretion of the department of ecology or board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the department of ecology or board may obtain judicial review thereof under the provisions of chapter 34.04 RCW as now or hereafter amended.

(6) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of *RCW 70.94.415 to any person or his property.

(7) An application for a variance, or for the renewal thereof, submitted to the department of ecology or board pursuant to this section shall be approved or disapproved by the department or board within sixty-five days of receipt unless the applicant and the department of ecology or board agree to a continuance. [1974 ex.s. c 59 § 1; 1969 ex.s. c 168 § 22; 1967 c 238 § 31.]

*Reviser's note: "RCW 70.94.415" was repealed by 1971 ex.s. c 194 § 7.

70.94.200 Investigation of conditions by control officer or director of health—Entering private, public property. For the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, a control officer, the director of the state department of health or their duly authorized representatives, shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing two families or less. No person shall refuse entry or access to any control officer, the director of health, or their duly authorized representatives, who requests entry for the purpose of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. [1967 c 238 § 32; 1957 c 232 § 20.]

70.94.205 Confidentiality of records and information. Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the department of ecology or the board of any authority pursuant to any sections in chapter 70.94 RCW, relate to processes or production unique to the

owner or operator, or is likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the department of ecology or board. Nothing herein shall be construed to prevent the use of records or information by the department of ecology or board in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: *Provided*, That such analyses or summaries do not reveal any information otherwise confidential under the provisions of this section: *Provided further*, That emission data furnished to or obtained by the department of ecology or board shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at offices of the department of ecology or board. [1973 1st ex.s. c 193 § 4; 1969 ex.s. c 168 § 23; 1967 c 238 § 33.]

70.94.211 Violations—Notice—Action by governing body, board or control officer—Hearing—Action by board. Whenever the board or the control officer has reason to believe that any provision of this chapter or any ordinance, resolution, rule or regulation relating to the control or prevention of air pollution has been violated, such board or control officer may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the ordinance, resolution, rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the board or the control officer may require that the alleged violator or violators appear before the board for a hearing, or in addition to or in place of an order or hearing, the board may initiate action pursuant to RCW 70.94.425, 70.94.430, and 70.94.435. [1974 ex.s. c 69 § 4; 1970 ex.s. c 62 § 57; 1969 ex.s. c 168 § 24; 1967 c 238 § 34.]

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

70.94.221 Order final unless appealed to pollution control hearings board. Any order issued by the board or by the control officer, shall become final unless such order is appealed to the hearings board as provided in chapter 43.21B RCW. [1970 ex.s. c 62 § 58; 1969 ex.s. c 168 § 25; 1967 c 238 § 35.]

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

70.94.222 Order—Finality—Review (as amended by 1970 ex.s. c 41 § 2). Any order issued by the board after a hearing shall become final unless no later than thirty days after the issuance of such order, a petition requesting judicial review is filed in accordance with the provisions of chapter 34.04 RCW as now or hereafter amended. When such a petition is filed, the superior court shall initiate a hearing pursuant to RCW 34.04.130 within ninety days after the receipt of the petition requesting judicial review. Every appeal from a decision of the superior court shall be heard by the appropriate appellate court as soon as possible. Such appeal shall be considered a case involving issues of

broad public import requiring prompt and ultimate determination. [1970 ex.s. c 41 § 2; 1969 ex.s. c 168 § 26; 1967 c 238 § 36.]

70.94.222 Order—Finality—Review (as amended by 1970 ex.s. c 62 § 59). Any order issued by the board after a hearing shall become final unless no later than thirty days after the issuance of such order, a notice of appeal is filed with the hearings board as provided in chapter 43.21B RCW. [1970 ex.s. c 62 § 59; 1969 ex.s. c 168 § 26; 1967 c 238 § 36.]

Reviser's note: RCW 70.94.222 was amended twice in the 1970 extraordinary session of the legislature, each without reference to the other.

For rule of construction concerning sections twice amended in the same session, see RCW 1.12.025.

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

70.94.223 Order—Stay pending final determination. Any order of the control officer or board shall be stayed pending final determination of any hearing or appeal taken in accordance with the provisions herein, unless after notice and hearing, the superior court shall determine that an emergency exists which is of such nature as to require that such order be in effect during the pendency of such hearing or appeal.

Nothing in this chapter shall prevent the control officer or board from making efforts to obtain voluntary compliance through warning, conference or any other appropriate means. [1969 ex.s. c 168 § 27; 1967 c 238 § 37.]

70.94.230 Rules of authority supersede local rules, regulations, etc.—Exceptions. The rules and regulations hereafter adopted by an authority under the provisions of this chapter shall supersede the existing rules, regulations, resolutions and ordinances of any of the component bodies included within said authority in all matters relating to the control and enforcement of air pollution as contemplated by this chapter: *Provided, however,* That existing rules, regulations, resolutions and ordinances shall remain in effect until such rules, regulations, resolutions and ordinances are superseded as provided in this section: *Provided further,* That nothing herein shall be construed to supersede any local county, or city ordinance or resolution, or any provision of the statutory or common law pertaining to nuisance; nor to affect any aspect of employer–employee relationship relating to conditions in a place of work, including without limitation, statutes, rules or regulations governing industrial health and safety standards or performance standards incorporated in zoning ordinances or resolutions of the component bodies where such standards relating to air pollution control or air quality containing requirements not less stringent than those of the authority. [1969 ex.s. c 168 § 28; 1967 c 238 § 38; 1957 c 232 § 23.]

70.94.231 Dissolution of prior districts—Continuation of rules and regulations until superseded. Upon the date that an authority begins to exercise its powers and functions, all districts formed as a district under chapter 70.94 RCW prior to June 8, 1967 which previously were wholly or partially composed of one or more cities or towns located within such activated authority shall be considered to be dissolved but its rules and regulations in

force on such date shall remain in effect until superseded by the rules and regulations of the authority as provided in RCW 70.94.230. In such event, the board of any such district shall proceed to wind up the affairs of the district in the same manner as if the district were dissolved as provided in RCW 70.94.260. [1969 ex.s. c 168 § 29; 1967 c 238 § 39.]

70.94.232 Local or regional control program considered activated authority—Construction of prior ordinances, resolutions, rules or regulations. (1) Any local or regional air pollution control program formed as a district under chapter 70.94 RCW prior to June 8, 1967 which is composed of one or more counties and the cities and towns therein, and whose boundaries are coextensive with the boundaries of one or more counties, shall, upon June 8, 1967, be considered an activated authority, provided that within six months of June 8, 1967 the board of directors shall be reorganized to conform to the provisions of RCW 70.94.100, 70.94.110 and 70.94.120.

(2) Nothing in this chapter except those sections which do so expressly shall be construed to supersede or nullify the ordinances, resolutions, rules or regulations of any local or regional air pollution control program in operation on June 8, 1967, but such local or regional programs shall be subject to the provisions of RCW 70.94.230, 70.94.231, 70.94.232, 70.94.380, 70.94.395, 70.94.400 and *70.94.415. [1967 c 238 § 40.]

***Reviser's note:** RCW "70.94.415" was repealed by 1971 ex.s. c 194 § 7.

70.94.240 Air pollution control advisory council. The board of any authority shall appoint an air pollution control advisory council to advise and consult with such board, and the control officer in effectuating the purposes of this chapter. The council shall consist of five appointed members who are residents of the authority and who are preferably skilled and experienced in the field of air pollution control, two of whom shall serve as representatives of industry. The chairman of the board of any such authority shall serve as ex officio member of the council and be its chairman. Each member of the council shall receive from the authority per diem and travel expenses in an amount not to exceed that provided for the state board in this chapter (but not to exceed one thousand dollars per year) for each full day spent in the performance of his duties under this chapter. [1969 ex.s. c 168 § 30; 1967 c 238 § 41; 1957 c 232 § 24.]

70.94.260 Dissolution of district—Deactivation of authority. A district formed under chapter 70.94 RCW prior to June 8, 1967 may be dissolved or an authority may be deactivated prior to the term provided in the original or subsequent agreement by the participating cities and towns comprising such district or the county or counties comprising such authority upon the adoption by the board, following a hearing held upon ten days notice, to said cities, towns, and counties, of a resolution for dissolution or deactivation and upon the approval by the governing body of each city or town comprising the district or the board of county commissioners of each county comprising the authority. In such event, the

board shall proceed to wind up the affairs of the district or authority and pay all indebtedness thereof. Any surplus of funds shall be paid over to the cities or towns comprising the district or to the counties comprising the authority in proportion to their last contribution. Upon the completion of the process of closing the affairs of the district or authority, the board shall by resolution entered in its minutes declare the district dissolved or the authority deactivated and a certified copy of such resolution shall be filed with the secretary of state and the district thereupon shall be deemed dissolved or the authority shall be deemed inactive. [1969 ex.s. c 168 § 31; 1967 c 238 § 43; 1957 c 232 § 26.]

70.94.305 Powers, duties and functions of state air pollution control board, executive director thereof, transferred to department of ecology. See RCW 43.21A.060.

70.94.331 Powers and duties of state board. (1) The state board shall have all the powers as provided in RCW 70.94.141.

(2) The state board, in addition to any other powers vested in it by law after consideration at a public hearing held in accordance with chapter 42.32 RCW and chapter 34.04 RCW shall:

(a) Adopt rules and regulations establishing air quality objectives and air quality standards;

(b) Adopt emission standards which shall constitute minimum emission standards throughout the state. An authority may enact more stringent emission standards, but in no event may less stringent standards be enacted by an authority without the prior approval of the state board after public hearing and due notice to interested parties;

(c) Adopt by rule and regulation air quality standards and emission standards for the control or prohibition of emissions to the outdoor atmosphere of dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof. Such requirements may be based upon a system of classification by types of emissions or types of sources of emissions, or combinations thereof, which it determines most feasible for the purposes of this chapter.

(3) The air quality standards and emission standards may be for the state as a whole or may vary from area to area, as may be appropriate to facilitate the accomplishment of the objectives of this chapter and to take necessary or desirable account of varying local conditions of population concentration, the existence of actual or reasonable foreseeable air pollution, topographic and meteorologic conditions and other pertinent variables.

(4) The state board is directed to cooperate with the appropriate agencies of the United States or other states or any interstate agencies or international agencies with respect to the control of air pollution and air contamination, or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements.

(5) The state board is directed to conduct or cause to be conducted a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants.

(6) The state board shall enforce the air quality standards and emission standards throughout the state except where a local authority is enforcing the state regulations or its own regulations which are more stringent than those of the state.

(7) The state board shall encourage local units of government to handle air pollution problems within their respective jurisdictions; and, on a cooperative basis provide technical and consultative assistance therefor.

(8) The state board shall have the power to require the addition to or deletion of a county from an existing authority in order to carry out the purposes of this chapter: *Provided, however,* That no such addition or deletion shall be made without the concurrence of any existing authority involved. Such action shall only be taken after a public hearing held pursuant to the provisions of chapter 34.04 RCW. [1969 ex.s. c 168 § 34; 1967 c 238 § 46.]

Reviser's note: See note (1) following RCW 70.94.141.

70.94.332 Violations—Notice—Action by department. Whenever the department has reason to believe that any provision of this chapter or any rule or regulation adopted by the state board or being enforced by the state board under RCW 70.94.410 relating to the control or prevention of air pollution has been violated, it may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the department may require that the alleged violator or violators appear before the state board or a duly appointed hearing officer for a hearing at a time and place specified in the notice given at least twenty days prior to such hearing and answer the charges complained of, or in addition to or in place of an order or hearing, the department may initiate action pursuant to RCW 70.94.425, 70.94.430, and 70.94.435. [1967 c 238 § 47.]

70.94.333 Orders of department—Hearings—Judicial review. (1) Any order issued by the department shall become final unless, no later than twenty days after the date the notice and order are served, the person aggrieved by the order petitions for a hearing before the state board. Upon receipt of the petition, the state board shall hold a hearing after not less than twenty days prior notice to petitioning parties.

(2) If, after a hearing held as a result of a petition to the state board by a person aggrieved by an order, the state board finds that a violation has occurred or is occurring, it shall affirm or modify the order previously issued, or if the finding made is that no violation has occurred or is occurring, the order shall be rescinded. If, after a hearing held in lieu of an order, the state board finds that a violation has occurred or is occurring, it shall issue an appropriate order or orders for the prevention, abatement or control of the emissions involved or for the taking of such other corrective actions as may be appropriate. Any order issued as part of a notice or

after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating or controlling the emissions.

(3) An order issued by the state board after a hearing shall become final unless no later than thirty days after the issuance and service of such order, a petition requesting judicial review is filed in the superior court of the county in which the violation is alleged to have occurred or is alleged to be likely to occur. Review shall be conducted without a jury de novo on the record in the superior court.

(4) The reviewing court may affirm or reverse the decision of the governing body or board. In addition, any party may move the court to remand the case to the state board, in the interests of justice, for the purpose of adducing additional specified and material evidence, and findings thereon: *Provided*, That such party shall show reasonable grounds for the failure to adduce such evidence previously before the state board.

(5) Any order of the department or the state board shall be stayed pending final determination of any hearing or appeal taken in accordance with the provisions herein, unless after notice and hearing, the superior court shall determine that an emergency exists which is of such nature as to require that such order be in effect during the pendency of such hearing or appeal.

(6) Nothing in this chapter shall prevent the department or the state board from making efforts to obtain voluntary compliance through warning, conference or any other appropriate means.

(7) Any hearing held under RCW 70.94.181 or 70.94.333 by the state board shall be conducted in accord with RCW 34.04.090 through 34.04.130. [1967 c 238 § 48.]

70.94.334 Appointment of hearing officer—Powers and duties. (1) In all instances where the department of ecology or board of any authority is permitted or required to hold hearings under the provisions of this chapter, such hearings shall be held before the department of ecology or board of any authority, or the state board or board of any authority may appoint a hearing officer.

(2) A duly appointed hearing officer shall have all the powers, rights, and duties of the department of ecology or board of any authority relating to the conduct of hearings. [1973 1st ex.s. c 193 § 5; 1969 ex.s. c 168 § 35; 1967 c 238 § 49.]

70.94.340 Quarterly reports, special studies by director—Distribution. The state director of health shall prepare quarterly reports over his signature, with the approval of the members of the state board. Such reports shall be distributed to the legislative council and interested parties including the affected units of local government. When deemed necessary as the result of a test or survey, the director with the approval of the state board may transmit copies of special studies and recommendations to affected governmental entities. [1961 c 188 § 5.]

70.94.350 Contracts, agreements for use of personnel by director—Reimbursement—Merit system regulations waived. The director of health is authorized to contract for or otherwise agree to the use of personnel of municipal corporations or other agencies or private persons; and the director of health is further authorized to reimburse such municipal corporations or agencies for the employment of such personnel. Merit system regulations or standards for the employment of personnel may be waived for personnel hired under contract as provided for in this section. The director of health shall provide, within available appropriations, for the scientific, technical, legal, administrative, and other necessary services and facilities for the functioning of the state board. The necessary staff, services, and facilities shall be administered through an appropriate organizational unit of the department of health under the direction of the executive director of the state board. [1967 c 238 § 45; 1961 c 188 § 6.]

70.94.370 Powers and rights of governmental units and persons are not limited by act or recommendations. No provision of this chapter or any recommendation of the state board or of any local or regional air pollution program is a limitation:

(1) On the power of any city, town or county to declare, prohibit and abate nuisances.

(2) On the power of the director of the state department of health to provide for the protection of the public health under any authority presently vested in that office or which may be hereafter prescribed by law.

(3) On the power of a state agency in the enforcement, or administration of any provision of law which it is specifically permitted or required to enforce or administer.

(4) On the right of any person to maintain at any time any appropriate action for relief against any air pollution. [1967 c 238 § 59; 1961 c 188 § 8.]

70.94.380 Emission control requirements. (1) Every activated authority operating an air pollution control program shall have requirements for the control of emissions which are no less stringent than those adopted by the state board for the geographic area in which such air pollution control program is located. Less stringent requirements than compelled by this section may be included in a local or regional air pollution control program only after approval by the state board following demonstration to the satisfaction of the state board that the proposed requirements are consistent with the purposes of this chapter: *Provided*, That such approval shall be preceded by public hearing, of which notice has been given in accordance with chapter 42.32 RCW. The state board, upon receiving evidence that conditions have changed or that additional information is relevant to a decision with respect to the requirements for emission control, may, after public hearing on due notice, withdraw any approval previously given to a less stringent local or regional requirement.

Nothing in this chapter shall be construed to prevent a local or regional air pollution control district or authority from adopting and enforcing more stringent emission

control requirements than those adopted by the state board and applicable within the jurisdiction of the local or regional air pollution control district or authority. [1969 ex.s. c 168 § 36; 1967 c 238 § 50.]

Reviser's note: See note (1) following RCW 70.94.141.

70.94.385 State financial aid—Application for—Requirements. (1) Any authority may apply to the state board for state financial aid. The state board shall by rule and regulation establish the ratio of state funds to the local funds taking into consideration available federal and state funds. Any such aid shall be expended from the general fund from such appropriations as the legislature may provide for this purpose: *Provided*, That federal funds shall be utilized to the maximum unless otherwise approved by the state board: *Provided further*, That the ratio of state funds to local funds of the previous year shall not be changed without a public hearing held by the state board.

(2) Before any such application is approved and financial aid is given or approved by the state board, the authority shall demonstrate to the satisfaction of the state board that it is fulfilling the requirements of RCW 70.94.380, or, if the state board has not adopted ambient air quality standards and objectives as permitted by RCW 70.94.331, the authority shall demonstrate to the satisfaction of the state board that it is acting in good faith and doing all that is possible and reasonable to control and prevent air pollution within its jurisdictional boundaries and to carry out the purposes of this chapter.

(3) The state board shall adopt rules and regulations requiring the submission of such information by each authority including the submission of its proposed budget and a description of its program in support of the application for state financial aid as necessary to enable the state board to determine the need for state aid. [1969 ex.s. c 168 § 37; 1967 c 238 § 51.]

70.94.390 Hearing upon activation of authority—Finding—Assumption of jurisdiction by state board—Expenses. The state board may, at any time and on its own motion, hold a hearing to determine if the activation of an authority is necessary for the prevention, abatement and control of air pollution which exists or is likely to exist in any area of the state. Notice of such hearing shall be conducted in accordance with chapter 42.32 RCW and chapter 34.04 RCW. If at such hearing the state board finds that air pollution exists or is likely to occur in a particular area, and that the purposes of this chapter and the public interest will be best served by the activation of an authority it shall designate the boundaries of such area and set forth in a report to the appropriate county or counties recommendations for the activation of an authority: *Provided*, That if at such hearing the state board determines that the activation of an authority is not practical or feasible for the reason that a local or regional air pollution control program cannot be successfully established or operated due to unusual circumstances and conditions, but that the control and/or prevention of air pollution is necessary for the purposes of this chapter and the public interest, it may assume jurisdiction and so declare by order. Such

order shall designate the geographic area in which, and the effective date upon which, the state board will exercise jurisdiction for the control and/or prevention of air pollution. The state board shall exercise its powers and duties in the same manner as if it had assumed authority under RCW 70.94.410.

All expenses incurred by the state board in the control and prevention of air pollution in any county pursuant to the provisions of RCW 70.94.390 and 70.94.410 shall constitute a claim against such county. The state board shall certify the expenses to the auditor of the county, who promptly shall issue his warrant on the county treasurer payable out of the current expense fund of the county. In the event that the amount in the current expense fund of the county is not adequate to meet the expenses incurred by the state board, the state board shall certify to the state treasurer that they have a prior claim on any money in the "liquor excise tax fund" that is to be apportioned to that county by the state treasurer as provided in RCW 82.08.170. In the event that the amount in the "liquor excise tax fund" that is to be apportioned to that county by the state treasurer is not adequate to meet the expenses incurred by the state board, the state board shall certify to the state treasurer that they have a prior claim on any excess funds from the liquor revolving fund that are to be distributed to that county as provided in RCW 66.08.190 through 66.08.220. All moneys that are collected as provided in this section shall be placed in the general fund in the account of the state air pollution control board. [1969 ex.s. c 168 § 38; 1967 c 238 § 52.]

Reviser's note: See note (1) following RCW 70.94.141.

70.94.395 Control of particular types or classes of air contaminant sources—Assumption by state board—Hearing—Standards. If the state board finds, after public hearing upon due notice to all interested parties, that the emissions from a particular type or class of air contaminant source should be regulated on a state-wide basis in the public interest and for the protection of the welfare of the citizens of the state, it may adopt and enforce rules and regulations to control and/or prevent the emission of air contaminants from such source: *Provided*, That an authority may, after public hearing and a finding by the board of a need for more stringent rules and regulations than those adopted by the state board under this section, propose the adoption of such rules and regulations by the state board for the control of emissions from the particular type or class or air contaminant source within the geographical area of the authority. The state board shall hold a public hearing and shall adopt the proposed rules and regulations within the area of the requesting authority, unless it finds that the proposed rules and regulations are inconsistent with the rules and regulations adopted by the state board under this section: *Provided, further*, That when such standards are adopted by the state board it shall delegate to the authority all powers necessary for their enforcement at the request of the authority: *Provided*, That the state board may delegate the responsibility for the enforcement of such rules and regulations to any authority which it deems capable of

enforcing such regulations: *Provided further*, That if after public hearing the state board finds that the regulation on a state-wide basis of a particular type of class of air contaminant source is no longer required for the public interest and the protection of the welfare of the citizens of the state, the state board may relinquish exclusive jurisdiction over such source. [1969 ex.s. c 168 § 39; 1967 c 238 § 53.]

70.94.400 Order activating authority—Filing—Hearing—Amendment of order. If, at the end of ninety days after the state board issues a report as provided for in RCW 70.94.390, to appropriate county or counties recommending the activation of an authority such county or counties have not performed those actions recommended by the state board, and the state board is still of the opinion that the activation of an authority is necessary for the prevention, abatement and control of air pollution which exists or is likely to exist, then the state board may, at its discretion, issue an order activating an authority. Such order, a certified copy of which shall be filed with the secretary of state, shall specify the participating county or counties and the effective date by which the authority shall begin to function and exercise its powers. Any authority activated by order of the state board shall choose the members of its board as provided in RCW 70.94.100 and begin to function in the same manner as if it had been activated by resolutions of the county or counties included within its boundaries. The state board may, upon due notice to all interested parties, conduct a hearing in accordance with chapter 42.32 RCW and chapter 34.04 RCW within six months after the order was issued to review such order and to ascertain if such order is being carried out in good faith. At such time the state board may amend any such order issued if it is determined by the state board that such order is being carried out in bad faith or the state board may take the appropriate action as is provided in RCW 70.94.410. [1969 ex.s. c 168 § 40; 1967 c 238 § 54.]

Reviser's note: See note (1) following RCW 70.94.141.

70.94.405 Hearing on effectiveness of prevention and control program—Report. At any time after an authority has been activated for no less than one year, the state board may, on its own motion, conduct a hearing held in accordance with chapter 42.32 RCW and chapter 34.04 RCW, as now or hereafter amended to determine whether or not the air pollution prevention and control program of such authority is being carried out in good faith and is as effective as possible under the circumstances: *Provided*, That no such hearing shall be held within one year of June 8, 1967. If at such hearing the board finds that such authority is not carrying out its air pollution control or prevention program in good faith, or is not doing all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction, it shall set forth in a report to the appropriate authority: (1) Its recommendations as to how air pollution prevention and/or control might be more effectively accomplished; and (2) guidelines which will assist the authority in carrying out the

recommendations of the state board. [1969 ex.s. c 168 § 41; 1967 c 238 § 55.]

Reviser's note: See note (1) following RCW 70.94.141.

70.94.410 Assumption of control by state board, when—Reestablishment of program—Withdrawal of state board. (1) If, after thirty days from the time that the state board issues a report or order to an authority under RCW 70.94.400 and 70.94.405, such authority has not taken any action which indicates that it is attempting in good faith to implement the recommendations or actions of the state board as set forth in the report or order, the state board may, by order, declare as null and void any or all ordinances, resolutions, rules or regulations of such authority relating to the control and/or prevention of air pollution, and at such time the state board shall become the sole body with authority to make and enforce rules and regulations to the control and/or prevention of air pollution within the geographical area of such authority. In this connection the state board may assume all those powers which are given to it by law to effectuate the purposes of this chapter. The state board may, by order, continue in effect and enforce those provisions of the ordinances, resolutions, or rules and regulations of such authority which are not less stringent than those requirements which the state board may have found applicable to the area under RCW 70.94.331 until such time as the board adopts its own rules and regulations. Any rules and regulations promulgated and any enforcement action, as provided in RCW 70.94.333, taken by the state board shall be subject to the provisions of chapter 34.04 RCW as it now appears or may hereinafter be amended and subject to RCW 70.94.425 and 70.94.435 to the extent that they are not inconsistent with chapter 34.04 RCW.

(2) No provision of this chapter is intended to prohibit any authority from reestablishing its air pollution control program which meets with the approval of the state board and which complies with the purposes of this chapter and with applicable rules and regulations and orders of the state board.

(3) Nothing in this chapter shall prevent the state board from withdrawing the exercise of its jurisdiction over an authority upon its own motion: *Provided*, That the state board has found at a hearing held in accordance with chapter 42.32 RCW and chapter 34.04 RCW as now or hereafter amended, that the air pollution prevention and control program of such authority will be carried out in good faith or that such program will do all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction. Upon the withdrawal of the state board, the state board shall prescribe certain recommendations as to how air pollution prevention and/or control is to be effectively accomplished and guidelines which will assist the authority in carrying out the recommendations of the state board. [1969 ex.s. c 168 § 42; 1967 c 238 § 56.]

Reviser's note: See note (1) following RCW 70.94.141.

70.94.420 Cooperation by state departments and agencies—Potential pollution sources—Permits. (1)

It is declared to be the intent of the legislature of the state of Washington that any state department or agency having jurisdiction over any building, installation, or other property shall cooperate with the state board and with air pollution control agencies in preventing and/or controlling the pollution of the air in any area insofar as the discharge of the matter from or by such building, installation, or other property may cause or contribute to pollution of the air in such area. Such state department or agency shall comply with the provisions of this chapter and with any ordinance, resolution, rule or regulation issued hereunder in the same manner as any other person subject to such laws, rules or regulations.

(2) In addition to its other powers and duties prescribed by law, the state board may establish classes of potential pollution sources for which any state department or agency having jurisdiction over any building, installation, or other property, which is not located within the geographical boundaries of any authority which has an air pollution control and/or prevention program in effect, shall, before discharging any matter into the air, obtain a permit from the state board for such discharge, such permits to be issued for a specified period of time to be determined by the state board and subject to revocation if the state board finds that such discharge is endangering the health and welfare of any persons. Such permits may also be required for any such building, installation, or other property which is located within the geographical boundaries of any authority which has an air pollution control and prevention program in effect if the standards set by the state board for state departments and agencies are more stringent than those of the authority. In connection with the issuance of any permits under this section, there shall be submitted to the state board such plans, specifications, and other information as it deems relevant thereto and under such other conditions as it may prescribe. [1969 ex.s. c 168 § 44; 1967 c 238 § 58.]

70.94.425 Restraining orders—Injunctions. Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule, regulation or order issued thereunder, the governing body or board or the state board, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order. [1967 c 238 § 60.]

70.94.430 Penalties. Any person who violates any of the provisions of this chapter, or any ordinance, resolution, rule or regulation in force pursuant thereto, other than RCW 70.94.205, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than two hundred fifty dollars, or by imprisonment for not more than ninety days, or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation.

Any person who wilfully violates any of the provisions of this chapter or any ordinance, resolution, rule or regulation in force pursuant thereto shall be guilty of a gross misdemeanor. Each day upon which such wilful violation occurs shall constitute a separate offense. Upon conviction the offender shall be punished by a fine of not less than one hundred dollars for each offense.

Any person who wilfully violates RCW 70.94.205 or any other provision of *this act 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. [1973 1st ex.s. c 176 § 1; 1967 c 238 § 61.]

**Reviser's note: "this act" apparently consists of the amendments to RCW 70.94.430 and 70.94.431 by 1973 1st ex.s. c 176.*

70.94.431 Additional or alternative penalty—Enforcement. In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of chapter 70.94 RCW or any of the rules and regulations of the department or the board shall incur a penalty in the form of a fine in an amount not to exceed two hundred fifty dollars per day for each violation. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation.

Each act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalty shall become due and payable when the person incurring the same receives a notice in writing from the director or his designee or the control officer of the authority or his designee describing the violation with reasonable particularity and advising such person that the penalty is due unless a request is made for a hearing to the hearings board as provided for in chapter 43.21B RCW. When a request is made for a hearing, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order affirming the penalty in whole or part. If the amount of such penalty is not paid to the department or the board within thirty days after it becomes due and payable, and a request for a hearing has not been made, the attorney general, upon the request of the director or his designee, or the attorney for the local authority, upon request of the board or control officer, shall bring an action to recover such penalty in the superior court of the county in which the violation occurred. All penalties recovered under this section by the state board shall be paid into the state treasury and credited to the general fund or, if recovered by the authority, shall be paid into the treasury of the authority and credited to its funds.

To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050.

In all actions brought in the superior court for the recovery of penalties hereunder, the procedure and rules

of evidence shall be the same as in an ordinary civil action. [1973 1st ex.s. c 176 § 2; 1969 ex.s. c 168 § 53.]

70.94.435 Additional means for enforcement of chapter. As an additional means of enforcing this chapter, the governing body or board may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter or of any ordinance, resolution, rule or regulation adopted pursuant hereto, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter or the ordinances, resolutions, rules or regulations, or order issued pursuant thereto, which make the alleged act or practice unlawful for the purpose of securing any injunction or other relief from the superior court as provided in RCW 70.94.425. [1967 c 238 § 62.]

70.94.440 Short title. This chapter may be known and cited as the "Washington Clean Air Act". [1967 c 238 § 63.]

70.94.445 Air pollution control facilities—Tax exemptions and credits. See chapter 82.34 RCW.

70.94.510 Policy to cooperate with federal government. It is declared to be the policy of the state of Washington through the state air pollution control board to cooperate with the federal government in order to insure the coordination of the provisions of the federal and state clean air acts, and the state air pollution control board is authorized and directed to implement and enforce the provisions of this chapter in carrying out this policy as follows:

(1) To accept and administer grants from the federal government for carrying out the provisions of this chapter.

(2) To take all action necessary to secure to the state the benefits of the federal clean air act. [1969 ex.s. c 168 § 45.]

70.94.600 Reports of authorities to state board—Contents. All authorities in the state shall submit quarterly reports to the state board detailing the current status of air pollution control regulations in the authority and, by county, the progress made toward bringing all sources in the authority into compliance with authority standards and with district minimum standards. [1969 ex.s. c 168 § 52.]

70.94.650 Burning permits for weed abatement, instruction or agriculture activities—Issuance—Activities exempted from requirement. Any person who proposes to set fires in the course of the following:

(1) Weed abatement,

(2) Instruction in methods of fire fighting (except forest fires), or

(3) Disease prevention relating to agricultural activities, shall, prior to carrying out the same, obtain a permit from an air pollution control authority or the

department of ecology, as appropriate. Each such authority and the department of ecology shall, by rule or ordinance, establish a permit system to carry out the provisions of this section except as provided in RCW 70.94.660. General criteria of state-wide applicability for ruling on such permits shall be established by the department, by rule or regulation, after consultation with the various air pollution control authorities. Permits shall be issued under this section based on seasonal operations or by individual operations, or both: *Provided*, That all permits so issued shall be conditioned to insure that the public interest in air, water, and land pollution and safety to life and property is fully considered. In addition to any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise the applicant is engaged in. All burning permits will be designed to minimize air pollution insofar as practical. Nothing in this section shall relieve the applicant from obtaining permits, licenses or other approvals required by any other law: *Provided further*, That an application for a permit to set fires in the course of agricultural burning for controlling diseases, insects, and development of physiological conditions conducive to increased crop yield, shall be granted within fourteen days from the date such application is filed: *Provided*, That nothing herein shall prevent a householder from setting fire in the course of burning leaves, clippings or trash when otherwise permitted locally. Nothing contained herein shall prohibit Indian campfires or the sending of smoke signals if part of a religious ritual. [1971 ex.s. c 232 § 1.]

70.94.654 Delegation of permit issuance and enforcement to counties. Whenever the department of ecology shall find that any county which is outside the jurisdictional boundaries of an activated air pollution control authority is capable of effectively administering the issuance and enforcement of permits for any or all of the kinds of burning identified in RCW 70.94.650(1) and (3) and desirous of doing so, the department of ecology may delegate all powers necessary for the issuance and enforcement of permits for any or all of the kinds of burning to the county: *Provided*, That such delegation may be withdrawn by the department of ecology upon a finding that the county is not effectively administering the permit program. [1973 1st ex.s. c 193 § 6.]

70.94.656 Open burning of field and turf grasses grown for seed—Alternatives—Studies—Funding—Procedures—Limitations. It is hereby declared to be the policy of this state that strong efforts should be made to minimize adverse effects on air quality from the open burning of field and turf grasses grown for seed. To such end this section is intended to promote the development of economical and practical alternate agricultural practices to such burning, and to provide for interim regulation of such burning until practical alternates are found.

(1) The department shall approve of a study or studies for the exploration and identification of economical and practical alternate agricultural practices to the open burning of field and turf grasses grown for seed. Prior to the issuance of any permit for such burning under RCW 70.94.650, there shall be collected a fee not to exceed fifty cents per acre of crop to be burned. Any such fees received by any authority shall be transferred to the department of ecology. The department of ecology shall deposit all such acreage fees in a special grass seed burning research account, hereby created, in the general fund. The department shall allocate moneys annually from this account for the support of any approved study or studies as provided for in this subsection. For the conduct of any such study or studies, the department may contract with public or private entities: *Provided*, That whenever the department of ecology shall conclude that sufficient reasonably available alternates to open burning have been developed, and at such time as all costs of any studies have been paid, the grass seed burning research account shall be dissolved, and any money remaining therein shall revert to the general fund.

(2) Whenever on the basis of information available to it, the department after public hearings have been conducted wherein testimony will be received and considered from interested parties wishing to testify shall conclude that any procedure, program, technique, or device constitutes a practical alternate agricultural practice to the open burning of field or turf grasses grown for seed, the department shall, by order, certify approval of such alternate. Thereafter, in any case which any such approved alternate is reasonably available, the open burning of field and turf grasses grown for seed shall be disallowed and no permit shall issue therefor.

(3) Until approved alternates become available, the department or the authority may limit the number of acres on a pro rata basis among those affected for which permits to burn will be issued in order to effectively control emissions from this source.

(4) Permits issued for burning of field and turf grasses may be conditioned to minimize emissions insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions. [1973 1st ex.s. c 193 § 7.]

Grass burning research advisory committee: Chapter 43.21E RCW.

70.94.660 Burning permits for abating or prevention of forest fire hazards, instruction or silvicultural operations—Issuance. The department of natural resources shall have the responsibility for issuing and regulating burning permits required by it relating to the following activities declared to be for the protection of life or property and/or in the public welfare:

- (1) Abating a forest fire hazard;
- (2) Prevention of a fire hazard;
- (3) Instruction of public officials in methods of forest fire fighting; and
- (4) Any silvicultural operation to improve the forest lands of the state. [1971 ex.s. c 232 § 2.]

Burning permits, issuance, air pollution a factor: RCW 76.04.150, 76.04.170.

Disposal of forest debris: RCW 76.04.310.

70.94.670 Burning permits for abating or prevention of forest fire hazards, instruction or silvicultural operations—Conditions for issuance and use of permits—Air quality standards to be met—Alternate methods to lessen forest debris. The department of natural resources in granting burning permits for fires for the purposes set forth in RCW 70.94.660 shall condition the issuance and use of such permits to comply with air quality standards established by the department of ecology after full consultation with the department of natural resources. Such burning shall not cause the state air quality standards for suspended particulate matter to be exceeded in the ambient air up to two thousand feet above ground level over critical areas designated by the department of ecology, otherwise subject to air pollution from other sources. Air quality standards for suspended particulate matter shall be established and published by the department of ecology which shall also establish a procedure for advising the department of natural resources when the air exceeds or threatens to exceed the standards over such critical areas. The suspended particulate matter shall be quantitatively measured by the department of ecology or the appropriate local air pollution control authority at established primary air mass stations or primary ground level monitoring stations over such designated areas. The department of natural resources shall set forth smoke dispersal objectives designed to minimize any air pollution from smoke from such burning and the procedures necessary to meet those objectives.

The department of natural resources shall encourage more intense utilization in logging to reduce forest fire hazards and shall encourage development and use of procedures and equipment to burn forest debris in a manner that will produce less smoke. The department of natural resources shall, whenever practical, encourage development and use of alternative acceptable disposal methods. Such alternative methods shall be evaluated as to the relative impact on air, water and land pollution, and their financial feasibility. [1971 ex.s. c 232 § 3.]

70.94.680 Extension of burning permit requirements. The department of natural resources may extend burning permit requirements to cover the types of burning set forth in RCW 70.94.650 through 70.94.700 during the period from October 15 through March 15 in order to protect the air quality, and shall extend such requirements if the department of ecology deems such action necessary to avoid an air pollution emergency where there is a high danger that normal operations at air contaminant sources in the area will be detrimental to the public health or safety. [1971 ex.s. c 232 § 4.]

70.94.690 Cooperation between department of natural resources and state, local, or regional air pollution authorities—Withholding of permits. In the regulation of outdoor burning not included in RCW 70.94.660 requiring permits from the department of natural resources, said department and the state, local, or regional air pollution control authorities will cooperate in regulating such burning so as to minimize insofar as possible duplicate inspections and separate permits while

still accomplishing the objectives and responsibilities of the respective agencies.

Permits shall be withheld by the department of natural resources when so requested by the department of ecology if a forecast, alert, warning or emergency condition exists as defined in the episode criteria of the department of ecology. [1971 ex.s. c 232 § 5.]

70.94.700 Rules and regulations. The department of natural resources and the department of ecology may adopt rules and regulations necessary to implement their respective responsibilities under the provisions of RCW 70.94.650 through 70.94.700. [1971 ex.s. c 232 § 6.]

70.94.710 Air pollution episodes—Legislative finding—Declaration of policy. The legislature finds that whenever meteorological conditions occur which reduce the effective volume of air into which air contaminants are introduced, there is a high danger that normal operations at air contaminant sources in the area affected will be detrimental to public health or safety. Whenever such conditions, herein denominated as air pollution episodes, are forecast, there is a need for rapid short-term emission reduction in order to avoid adverse health or safety consequences.

Therefore, it is declared to be the policy of this state that an episode avoidance plan should be developed and implemented for the temporary reduction of emissions during air pollution episodes.

It is further declared that power should be vested in the governor to issue emergency orders for the reduction or discontinuance of emissions when such emissions and weather combine to create conditions imminently dangerous to public health and safety. [1971 ex.s. c 194 § 1.]

70.94.715 Air pollution episodes—Episode avoidance plan—Contents—Source emission reduction plans—Authority—Considered orders. The department of ecology is hereby authorized to develop an episode avoidance plan providing for the phased reduction of emissions wherever and whenever an air pollution episode is forecast. Such an episode avoidance plan shall conform with any applicable federal standards and shall be effective state-wide. The episode avoidance plan may be implemented on an area basis in accordance with the occurrence of air pollution episodes in any given area.

The department of ecology may delegate authority to adopt source emission reduction plans and authority to implement all stages of occurrence up to and including the warning stage, and all intermediate stages up to the warning stage, in any area of the state, to the air pollution control authority with jurisdiction therein.

The episode avoidance plan, which shall be established by regulation in accordance with chapter 34.04 RCW, shall include, but not be limited to the following:

(1) The designation of episode criteria and stages, the occurrence of which will require the carrying out of pre-planned episode avoidance procedures. The stages of occurrence shall be (a) forecast, (b) alert, (c) warning, (d) emergency, and such intermediate stages as the

department shall designate. "Forecast" means the presence of meteorological conditions that are conducive to accumulation of air contaminants and is the first stage of an episode. "Alert" means concentration of air contaminants at levels at which short-term health effects may occur, and is the second stage of an episode. "Warning" means concentrations are continuing to degrade, contaminant concentrations have reached a level which, if maintained, can result in damage to health, and additional control actions are needed and is the third level of an episode. "Emergency" means the air quality is posing an imminent and substantial endangerment to public health and is the fourth level of an episode;

(2) The requirement that persons responsible for the operation of air contaminant sources prepare and obtain approval from the director of source emission reduction plans, consistent with good operating practice and safe operating procedures, for reducing emissions during designated episode stages;

(3) Provision for the director of the department of ecology or his authorized representative, or the air pollution control officer if implementation has been delegated, on the satisfaction of applicable criteria, to declare and terminate the forecast, alert, warning and all intermediate stages, up to the warning episode stage, such declarations constituting orders for action in accordance with applicable source emission reduction plans;

(4) Provision for the governor to declare and terminate the emergency stage and all intermediate stages above the warning episode stage, such declarations constituting orders in accordance with applicable source emission reduction plans;

(5) Provisions for enforcement by state and local police, personnel of the departments of ecology and social and health services, and personnel of local air pollution control agencies; and

(6) Provisions for reduction or discontinuance of emissions immediately, consistent with good operating practice and safe operating procedures, under an air pollution emergency as provided in RCW 70.94.720.

Source emission reduction plans shall be considered orders of the department and shall be subject to appeal to the pollution control hearings board according to the procedure in chapter 43.21B RCW. [1971 ex.s. c 194 § 2.]

70.94.720 Air pollution episodes—Declaration of air pollution emergency by governor. Whenever the governor finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to public health or safety, he may declare an air pollution emergency and may order the person or persons responsible for the operation of such air contaminant source or sources to reduce or discontinue emissions consistent with good operating practice, safe operating procedures and source emission reduction plans, if any, adopted by the department of ecology or any local air pollution control authority to which the department of ecology has delegated authority to adopt emission reduction plans. Orders authorized by this section shall

be in writing and may be issued without prior notice or hearing. In the absence of the governor, any findings, declarations and orders authorized by this section may be made and issued by his authorized representative. [1971 ex.s. c 194 § 3.]

70.94.725 Air pollution episodes—Restraining orders, temporary injunctions to enforce orders—Procedure. Whenever any order has been issued pursuant to RCW 70.94.710 through 70.94.730, the attorney general, upon request from the governor, the director of the department of ecology, an authorized representative of either, or the attorney for a local air pollution control authority upon request of the control officer, shall petition the superior court of the county in which is located the air contaminant source for which such order was issued for a temporary restraining order requiring the immediate reduction or discontinuance of emissions from such source.

Upon request of the party to whom a temporary restraining order is directed, the court shall schedule a hearing thereon at its earliest convenience, at which time the court may withdraw the restraining order or grant such temporary injunction as is reasonably necessary to prevent injury to the public health or safety. [1971 ex.s. c 194 § 4.]

70.94.730 Air pollution episodes—Orders to be effective immediately. Orders issued to declare any stage of an air pollution episode avoidance plan under RCW 70.94.715, and to declare an air pollution emergency, under RCW 70.94.720, and orders to persons responsible for the operation of an air contaminant source to reduce or discontinue emissions, according to RCW 70.94.715 and 70.94.720 shall be effective immediately and shall not be stayed pending completion of review. [1971 ex.s. c 194 § 5.]

70.94.740 Limited outdoor burning—Policy. It is the policy of the state to achieve and maintain high levels of air quality and to this end to minimize to the greatest extent reasonably possible the burning of outdoor fires. Consistent with this policy, the legislature declares that such fires should be allowed only on a limited basis under strict regulation and close control. [1972 ex.s. c 136 § 1.]

70.94.745 Limited outdoor burning—Program. It shall be the responsibility and duty of the department of natural resources, department of ecology, fire districts and local air pollution control authorities to establish, through regulations, ordinances or policy, a limited burning program for the people of this state, consisting of a one-permit system, until such time as an alternate technology or method of disposing of the organic refuse described in this chapter shall have been developed which is reasonably economical and less harmful to the environment. It is the policy of this state to encourage the fostering and development of such alternate method or technology. [1972 ex.s. c 136 § 2.]

70.94.750 Limited outdoor burning—Fires permitted. The following outdoor fires described in this section may be burned subject to the provisions of the program established pursuant to RCW 70.94.755 for any area and subject to city ordinances, county resolutions, and rules and regulations of fire districts and laws and rules and regulations enforced by the department of natural resources:

(1) Fires consisting of leaves, clippings, prunings and other yard and gardening refuse originating on lands immediately adjacent and in close proximity to a human dwelling and burned on such lands by the property owner or his designee.

(2) Fires consisting of residue of a natural character such as trees, stumps, shrubbery or other natural vegetation arising from land clearing projects or agricultural pursuits for pest or disease control; provided the fires described in this subsection may be prohibited in those areas having a general population density of one thousand or more persons per square mile. [1972 ex.s. c 136 § 3.]

70.94.755 Limited outdoor burning—Establishment of program. Each activated air pollution control authority, and the department of ecology in those areas outside the jurisdictional boundaries of an activated air pollution control authority, shall establish, through regulations, ordinances or policy, a program implementing the limited burning policy authorized by RCW 70.94.740 through 70.94.765. [1972 ex.s. c 136 § 4.]

70.94.760 Limited outdoor burning—Construction. Nothing contained in RCW 70.94.740 through 70.94.765 is intended to alter or change the provisions of RCW 70.94.660, 70.94.710 through 70.94.730, and 76.04.150 through 76.04.170. [1972 ex.s. c 136 § 5.]

70.94.765 Limited outdoor burning—Authority of local air pollution control authority or department of ecology to allow outdoor fires not restricted. Nothing in RCW 70.94.740 through 70.94.765 shall be construed as prohibiting a local air pollution control authority or the department of ecology in those areas outside the jurisdictional boundaries of an activated pollution control authority from allowing the burning of outdoor fires. [1972 ex.s. c 136 § 6.]

70.94.770 Burning wood by resident of single family residence. Except as provided in RCW 70.94.775 and 70.94.780, nothing in this chapter or in regulations implementing this chapter shall prevent a resident of a single family residence from burning wood, so long as it has not been treated by an application of prohibitive material or substances, and natural vegetation in the course of maintaining or improving the grounds of such residence: *Provided*, That the department of ecology or board of any authority may set conditions for such burning so as to reduce the impact on air quality. [1973 1st ex.s. c 193 § 8.]

70.94.775 Outdoor burning—Fires prohibited—Exceptions. No person shall cause or allow any outdoor fire:

(1) Containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, or any substance other than natural vegetation which normally emits dense smoke or obnoxious odors except as provided in RCW 70.94.650: *Provided*, That agricultural heating devices which otherwise meet the requirements of this chapter shall not be considered outdoor fires under this section;

(2) During a forecast, alert, warning or emergency condition as defined in RCW 70.94.715;

(3) In any area which has been designated by the department of ecology or board of an activated authority as an area exceeding or threatening to exceed state or federal ambient air quality standards, or after July 1, 1976, state ambient air quality goals for particulates, except instructional fires permitted by RCW 70.94.650(2). [1974 ex.s. c 164 § 1; 1973 2nd ex.s. c 11 § 1; 1973 1st ex.s. c 193 § 9.]

70.94.780 Outdoor burning—Regulation and prohibition. In addition to any other powers granted to them by law, the fire protection agency authorized to issue burning permits may regulate or prohibit outdoor burning in order to prevent or abate the nuisances caused by such burning. [1973 1st ex.s. c 193 § 10.]

70.94.785 Plans approved pursuant to federal clean air act—Enforcement authority. Notwithstanding any provision of the law to the contrary, except RCW 70.94.660 through 70.94.690, the department of ecology, upon its approval of any plan (or part thereof) required or permitted under the federal clean air act, shall have the authority to enforce all regulatory provisions within such plan (or part thereof): *Provided*, That departmental enforcement of any such provision which is within the power of an activated authority to enforce shall be initiated only, when with respect to any source, the authority is not enforcing the provisions and then only after written notice is given the authority. [1973 1st ex.s. c 193 § 11.]

70.94.901 Construction—1967 c 238. This 1967 amendatory act shall not be construed to create in any way nor to enlarge, diminish or otherwise affect in any way any private rights in any civil action for damages. Any determination that there has been a violation of the provisions of this 1967 amendatory act or of any ordinance, rule, regulation or order issued pursuant thereto, shall not create by reason thereof any presumption or finding of fact or of law for use in any lawsuit brought by a private citizen. [1967 c 238 § 65.]

70.94.902 Construction, repeal of RCW 70.94.061-70.94.066—Saving. The following acts or parts of acts are each repealed:

(1) Section 7, chapter 238, Laws of 1967, and RCW 70.94.061;

(2) Section 8, chapter 238, Laws of 1967, and RCW 70.94.062;

(3) Section 9, chapter 238, Laws of 1967, and RCW 70.94.064; and

(4) Section 10, chapter 238, Laws of 1967, and RCW 70.94.066.

Such repeals shall not be construed as affecting any authority in existence on April 24, 1969, nor as affecting any action, activities or proceedings initiated by such authority prior hereto, nor as affecting any civil or criminal proceedings instituted by such authority, nor any rule, regulation, resolution, ordinance, or order promulgated by such authority, nor any administrative action taken by such authority, nor the term of office, or appointment or employment of any person appointed or employed by such authority. [1969 ex.s. c 168 § 46.]

70.94.911 Severability—1967 c 238. If any phrase, clause, subsection or section of this 1967 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid. [1967 c 238 § 64.]

70.94.950 Disincorporation of district located in class A or AA county and inactive for five years. See chapter 57.90 RCW.

**Chapter 70.95
SOLID WASTE MANAGEMENT—RECOVERY
AND RECYCLING**

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70.95.010 Legislative finding. The legislature finds:

(1) Continuing technological changes in methods of manufacture, packaging, and marketing of consumer products, together with the economic and population growth of this state, the rising affluence of its citizens, and its expanding industrial activity have created new and ever-mounting problems involving disposal of garbage, refuse, and solid waste materials resulting from domestic, agricultural, and industrial activities.

(2) Traditional methods of disposing of solid wastes in this state are no longer adequate to meet the ever-increasing problem. Improper methods and practices of handling and disposal of solid wastes pollute our land, air and water resources, blight our countryside, adversely affect land values, and damage the overall quality of our environment.

(3) Considerations of natural resource limitations, energy shortages, economics and the environment make necessary the development and implementation of solid waste recovery and/or recycling plans and programs. [1975-'76 2nd ex.s. c 41 § 1; 1969 ex.s. c 134 § 1.]

70.95.020 Purpose. The purpose of this chapter is to establish a comprehensive state-wide program for solid waste handling, and solid waste recovery and/or recycling which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of this state. To this end it is the purpose of this chapter:

(1) To assign primary responsibility for adequate solid waste handling to local government, reserving to the state, however, those functions necessary to assure effective programs throughout the state;

(2) To provide for adequate planning for solid waste handling by local government;

(3) To provide for the adoption and enforcement of basic minimum performance standards for solid waste handling;

(4) To provide technical and financial assistance to local governments in the planning, development, and conduct of solid waste handling programs;

(5) It is the intent of the legislature that local governments be encouraged to use the expertise of private industry and to contract with private industry to the fullest extent possible to carry out solid waste recovery

and/or recycling programs. [1975-'76 2nd ex.s. c 41 § 2; 1969 ex.s. c 134 § 2.]

70.95.030 Definitions. As used in this chapter, unless the context indicates otherwise:

(1) "City" means every incorporated city and town.

(2) "Committee" means the solid waste advisory committee.

(3) "Department" means the department of ecology.

(4) "Director" means the director of the department of ecology.

(5) "Disposal site" means the location where any final treatment, utilization, processing, or depository of solid waste occurs.

(6) "Functional standards" means criteria for solid waste handling expressed in terms of expected performance or solid waste handling functions.

(7) "Jurisdictional health department" means city, county, city-county, or district public health department.

(8) "Person" means individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(9) "Solid waste" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities.

(10) "Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from such wastes or the conversion of the energy in such wastes to more useful forms or combinations thereof. [1975-'76 2nd ex.s. c 41 § 3; 1970 ex.s. c 62 § 60; 1969 ex.s. c 134 § 3.]

Solid waste disposal, powers and duties of state board of health as to environmental contaminants: RCW 43.20.050.

70.95.040 Solid waste advisory committee—Created—Membership—Chairman—Meetings—Travel expenses (as amended by 1975-'76 2nd ex.s. c 34). There is created a solid waste advisory committee to provide consultation to the department of environmental quality concerning matters covered by this chapter. The committee shall advise on the development of programs and regulations for solid waste management, and shall supply recommendations concerning methods by which existing solid waste management practices and the laws authorizing them may be supplemented and improved.

The committee shall consist of seven members, including the assistant director for the division of solid waste management within the department. The remaining six members shall be appointed by the director with due regard to the interests of the public, local government, agriculture, industry, public health, and the refuse removal industry. The term of appointment shall be determined by the director. The committee shall elect its own chairman and meet at least four times a year, in accordance with such rules of procedure as it shall establish. Members shall receive no compensation for their services but shall be reimbursed their travel expenses while engaged in business of the committee in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 160; 1969 ex.s. c 134 § 4.]

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

70.95.040 Solid waste advisory committee—Created—Membership—Chairman—Meetings—Expenses and per diem (as amended by 1975-'76 2nd ex.s. c 41). There is created a solid waste advisory committee to provide consultation to the department of ecology concerning matters covered by this chapter. The committee shall advise on the development of programs and regulations for solid waste handling and solid waste recovery and/or recycling, and shall supply recommendations concerning methods by which existing solid waste handling and solid waste recovery and/or recycling practices and the laws authorizing them may be supplemented and improved.

The committee shall consist of nine members, including the assistant director for the division of solid waste management within the department. The remaining eight members shall be appointed by the director with due regard to the interests of the public, local government, agriculture, industry, public health, and the refuse removal and resource recovery industries. The term of appointment shall be determined by the director. The committee shall elect its own chairman and meet at least four times a year, in accordance with such rules of procedure as it shall establish. Members shall receive no compensation for their services but shall be reimbursed twenty-five dollars per diem for each day or portion thereof spent serving as members of the committee and shall be paid their necessary traveling expenses while engaged in business of the committee as prescribed in chapter 43.03 RCW, as now or hereafter amended. [1975-'76 2nd ex.s. c 41 § 9; 1969 ex.s. c 134 § 4.]

Reviser's note: RCW 70.95.040 was amended twice during the 1975-'76 second extraordinary session of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at the same session, see RCW 1.12.025.

70.95.050 Solid waste advisory committee—Staff services and facilities. The department shall furnish necessary staff services and facilities required by the solid waste advisory committee. [1969 ex.s. c 134 § 5.]

70.95.060 Standards for solid waste handling—Areas. The department in accordance with procedures prescribed by the Administrative Procedure Act, chapter 34.04 RCW, as now or hereafter amended, may adopt such minimum functional standards for solid waste handling as it deems appropriate. The department in adopting such standards may classify areas of the state with respect to population density, climate, geology, and other relevant factors bearing on solid waste disposal standards. [1969 ex.s. c 134 § 6.]

70.95.070 Review of standards prior to adoption—Revisions, additions and modifications—Factors. The solid waste advisory committee shall review prior to adoption and shall recommend revisions, additions, and modifications to the minimum functional standards governing solid waste handling relating, but not limited to, the following:

- (1) Vector production and sustenance.
- (2) Air pollution (coordinated with regulations of the department of ecology).
- (3) Pollution of surface and ground waters (coordinated with the regulations of the department of ecology).
- (4) Hazards to service or disposal workers or to the public.
- (5) Prevention of littering.
- (6) Adequacy and adaptability of disposal sites to population served.
- (7) Design and operation of disposal sites.
- (8) Recovery and/or recycling of solid waste. [1975-'76 2nd ex.s. c 41 § 4; 1969 ex.s. c 134 § 7.]

70.95.080 County comprehensive solid waste management plan—Joint plans—Duties of cities. Each county within the state, in cooperation with the various cities located within such county, shall prepare a coordinated, comprehensive solid waste management plan. Such plan may cover two or more counties.

Each city shall:

- (1) Prepare and deliver to the county auditor of the county in which it is located its plan for its own solid waste management for integration into the comprehensive county plan; or
- (2) Enter into an agreement with the county pursuant to which the city shall participate in preparing a joint city-county plan for solid waste management; or
- (3) Authorize the county to prepare a plan for the city's solid waste management for inclusion in the comprehensive county plan.

Two or more cities may prepare a plan for inclusion in the county plan. With prior notification of its home county of its intent, a city in one county may enter into an agreement with a city in an adjoining county, or with an adjoining county, or both, to prepare a joint plan for solid waste management to become part of the comprehensive plan of both counties.

After consultation with representatives of the cities and counties, the department shall establish a schedule for the development of the comprehensive plans for solid waste management. In preparing such a schedule, the department shall take into account the probable cost of such plans to the cities and counties. [1969 ex.s. c 134 § 8.]

70.95.090 Contents of each county and city solid waste management comprehensive plan. Each county and city solid waste management plan shall include the following:

- (1) A detailed inventory and description of all existing solid waste handling facilities including an inventory of any deficiencies in meeting current solid waste handling needs.
- (2) The estimated long-range needs for solid waste handling facilities projected twenty years into the future.
- (3) A program for the orderly development of solid waste handling facilities in a manner consistent with the plans for the entire county which shall:
 - (a) Meet the minimum functional standards for solid waste handling adopted by the department and all laws and regulations relating to air and water pollution, fire prevention, flood control, and protection of public health;
 - (b) Take into account the comprehensive land use plan of each jurisdiction;
 - (c) Contain a six year construction and capital acquisition program for solid waste handling facilities; and
 - (d) Contain a plan for financing both capital costs and operational expenditures of the proposed solid waste management system.
- (4) A program for surveillance and control.
- (5) A current inventory and description of solid waste collection needs and operations within each respective jurisdiction which shall include:
 - (a) Any franchise for solid waste collection granted by the utilities and transportation commission in the

respective jurisdictions including the name of the holder of the franchise and the address of his place of business and the area covered by his operation;

(b) Any city solid waste operation within the county and the boundaries of such operation;

(c) The population density of each area serviced by a city operation or by a franchised operation within the respective jurisdictions;

(d) The projected solid waste collection needs for the respective jurisdictions for the next six years. [1971 ex.s. c 293 § 1; 1969 ex.s. c 134 § 9.]

Certain provisions not to detract from commission powers, duties and functions: RCW 80.01.300.

70.95.100 Submission of plans to department—Recommended revisions. Each comprehensive county solid waste management plan shall be submitted to the department for technical review and approval. The department may recommend revisions essential to the achievement of effective solid waste management and the purposes of this chapter. [1969 ex.s. c 134 § 10.]

70.95.110 Maintenance of plans—Review. The comprehensive county solid waste handling plans and any city solid waste handling plans prepared in accordance with RCW 70.95.080 shall be maintained in a current condition and reviewed and revised periodically by counties and cities as may be required by the department of environmental quality. Upon each review such plans shall be extended to show long-range needs for solid waste handling facilities for twenty years in the future, and a revised construction and capital acquisition program for six years in the future. Each revised solid waste handling plan shall be submitted to the department of environmental quality. [1969 ex.s. c 134 § 11.]

70.95.120 Technical assistance. The department shall provide to counties and cities technical assistance in the preparation, review and revision of solid waste handling plans required by this chapter. [1969 ex.s. c 134 § 12.]

70.95.130 Financial aid to counties and cities. Any county may apply to the department on a form prescribed thereby for financial aid for the preparation of the comprehensive county plan for solid waste management required by RCW 70.95.080. Any city electing to prepare an independent city plan, a joint city plan, or a joint county-city plan for solid waste management for inclusion in the county comprehensive plan may apply for financial aid for such purpose through the county. Every city application for financial aid for planning shall be filed with the county auditor and shall be included as a part of the county's application for financial aid. Any city preparing an independent plan shall provide for disposal sites wholly within its jurisdiction.

The department shall allocate to the counties and cities applying for financial aid for planning, such funds as may be available pursuant to legislative appropriations or from any federal grants for such purpose.

The department shall determine priorities and allocate available funds among the counties and cities applying

for aid according to criteria established by regulations of the department considering population, urban development, environmental effects of waste disposal, existing waste handling practices, and the local justification of their proposed expenditures. [1969 ex.s. c 134 § 13.]

70.95.140 Matching requirements. Counties and cities shall match their planning aid allocated by the director by an amount not less than twenty-five percent of the estimated cost of such planning. Any federal planning aid made directly to a county or city shall not be considered either a state or local contribution in determining local matching requirements. Counties and cities may meet their share of planning costs by cash and contributed services. [1969 ex.s. c 134 § 14.]

70.95.150 Contracts with counties to assure proper expenditures. Upon the allocation of planning funds as provided in RCW 70.95.130, the department shall enter into a contract with each county receiving a planning grant. The contract shall include such provisions as the director may deem necessary to assure the proper expenditure of such funds including allocations made to cities. The sum allocated to a county shall be paid to the treasurer of such county. [1969 ex.s. c 134 § 15.]

70.95.160 County, city or jurisdictional board of health regulations. Each county, or any city, or jurisdictional board of health shall adopt regulations or ordinances governing solid waste handling implementing the comprehensive solid waste management plan covering storage, collection, transportation, treatment, utilization, processing and final disposal including the issuance of permits. Such regulations or ordinances shall assure that solid waste storage and disposal facilities are located, maintained, and operated in a manner so as properly to protect the public health, prevent air and water pollution, and avoid the creation of nuisances. Such regulations or ordinances may be more stringent than the minimum functional standards adopted by the department. Regulations or ordinances adopted by counties, cities, or jurisdictional boards of health shall be filed with the department of environmental quality. [1969 ex.s. c 134 § 16.]

70.95.170 Permit for solid waste disposal site or facilities—Required. After approval of the comprehensive solid waste plan by the department no solid waste disposal site or disposal site facilities shall be maintained, established, substantially altered, expanded, or improved until the county, city, or other person operating such site has obtained a permit from the jurisdictional health department pursuant to the provisions of RCW 70.95.180. [1969 ex.s. c 134 § 17.]

70.95.180 Permit for solid waste disposal site or facilities—Applications, fee. (1) Applications for permits to operate new or existing solid waste disposal sites shall be on forms prescribed by the department of environmental quality and shall contain a description of the proposed and existing facilities and operations at the site, plans and specifications for any new or additional

facilities to be constructed, and such other information as the jurisdictional health department may deem necessary in order to determine whether the site and solid waste disposal facilities located thereon will comply with local and state regulations.

(2) Upon receipt of an application for a permit to establish, alter, expand, improve, or continue in use a solid waste disposal site, the jurisdictional health department shall refer one copy of the application to the department of environmental quality which shall report its findings to the jurisdictional health department.

(3) The jurisdictional health department shall investigate every application as may be necessary to determine whether an existing or proposed site and facilities meet all applicable laws and regulations, and conforms with the approved comprehensive solid waste handling plan, and complies with all zoning requirements.

(4) When the jurisdictional health department finds that the permit should be issued, it shall issue such permit. Every application shall be approved or disapproved within ninety days after its receipt by the jurisdictional health department.

(5) The jurisdictional board of health may establish reasonable fees for permits and renewal of permits. All permit fees collected by the health department shall be deposited in the treasury and to the account from which the health department's operating expenses are paid. [1969 ex.s. c 134 § 18.]

70.95.190 Permit for solid waste disposal site or facilities—Renewal. Every permit for a solid waste disposal site shall be renewed annually on a date to be established by the jurisdictional health department having jurisdiction of the site. Prior to renewing a permit, the health department shall conduct such inspections as it deems necessary to assure that the solid waste disposal site and facilities located on the site meet minimum functional standards of the department of environmental quality and applicable local regulations. [1969 ex.s. c 134 § 19.]

70.95.200 Permit for solid waste disposal site or facilities—Suspension. Any permit for a solid waste disposal site issued as provided herein shall be subject to suspension at any time the jurisdictional health department determines that the site or the solid waste disposal facilities located on the site are being operated in violation of this chapter, or the regulations of the department or local laws and regulations. [1969 ex.s. c 134 § 20.]

70.95.210 Hearing—Appeal. Whenever the jurisdictional health department denies a permit or suspends a permit for a solid waste disposal site, it shall, upon request of the applicant or holder of the permit, grant a hearing on such denial or suspension within thirty days after the request therefor is made. Notice of the hearing shall be given all interested parties including the county or city having jurisdiction over the site and the department of environmental quality. Within thirty days after the hearing, the health officer shall notify the applicant or the holder of the permit in writing of his determination and the reasons therefor. Any party aggrieved by

such determination may appeal to the department of environmental quality by filing with the director a notice of appeal within thirty days after receipt of notice of the determination of the health officer. The department shall hold a hearing in accordance with the provisions of the Administrative Procedure Act, chapter 34.04 RCW, as now or hereafter amended. [1969 ex.s. c 134 § 21.]

70.95.220 Financial aid to jurisdictional health departments—Applications—Allocations. Any jurisdictional health department may apply to the department for financial aid for the enforcement of rules and regulations promulgated under this chapter. Such application shall contain such information, including budget and program description, as may be prescribed by regulations of the department.

After receipt of such applications the department may allocate available funds according to criteria established by regulations of the department considering population, urban development, the number of the disposal sites, and geographical area.

The sum allocated to a jurisdictional health department shall be paid to the treasury from which the operating expenses of the health department are paid, and shall be used exclusively for inspections and administrative expenses necessary to enforce applicable regulations. [1969 ex.s. c 134 § 22.]

70.95.230 Financial aid to jurisdictional health departments—Matching funds requirements. The jurisdictional health department applying for state assistance for the enforcement of this chapter shall match such aid allocated by the department in an amount not less than twenty-five percent of the total amount spent for such enforcement activity during the year. The local share of enforcement costs may be met by cash and contributed services. [1969 ex.s. c 134 § 23.]

70.95.240 Unlawful to dump or deposit solid waste without permit. After the adoption of regulations or ordinances by any county, city, or jurisdictional board of health providing for the issuance of permits as provided in RCW 70.95.160, it shall be unlawful for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the waters of this state except at a solid waste disposal site for which there is a valid permit: *Provided*, That nothing herein shall prohibit a person from dumping or depositing solid waste resulting from his own activities onto or under the surface of ground owned or leased by him when such action does not violate statutes or ordinances, or create a nuisance. Any person violating this section shall be guilty of a misdemeanor. [1969 ex.s. c 134 § 24.]

70.95.250 Name appearing on waste material—Presumption. Whenever solid wastes dumped in violation of RCW 70.95.240 contain three or more items bearing the name of one individual, there shall be a rebuttable presumption that the individual whose name appears on

such items committed the unlawful act of dumping. [1969 ex.s. c 134 § 25.]

70.95.260 Powers and duties of department. The department shall in addition to its other powers and duties:

(1) Cooperate with the appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out the provisions of this chapter.

(2) Coordinate the development of a solid waste management plan for all areas of the state in cooperation with local government, the planning and community affairs agency or its successor, and other appropriate state and regional agencies. The plan shall relate to solid waste management for twenty years in the future and shall be reviewed biennially, revised as necessary, and extended so that perpetually the plan shall look to the future for twenty years as a guide in carrying out a state coordinated solid waste management program.

(3) Provide technical assistance to any person as well as to cities, counties, and industries.

(4) Initiate, conduct, and support research, demonstration projects, and investigations, and coordinate research programs pertaining to solid waste management systems.

(5) May, under the provisions of the Administrative Procedure Act, chapter 34.04 RCW, as now or hereafter amended, from time to time promulgate such rules and regulations as are necessary to carry out the purposes of this chapter. [1969 ex.s. c 134 § 26.]

70.95.263 Additional powers and duties of department. The department shall in addition to its other duties and powers under this chapter:

(1) Prepare the following:

(a) a management system for recycling waste paper generated by state offices and institutions in cooperation with such offices and institutions;

(b) an evaluation of existing and potential systems for recovery of energy and materials from solid waste with recommendations to affected governmental agencies as to those systems which would be the most appropriate for implementation;

(c) a data management system to evaluate and assist the progress of state and local jurisdictions and private industry in resource recovery;

(d) identification of potential markets, in cooperation with private industry, for recovered resources and the impact of the distribution of such resources on existing markets;

(e) studies on methods of transportation, collection, reduction, separation, and packaging which will encourage more efficient utilization of existing waste recovery facilities;

(f) recommendations on incentives, including state grants, loans, and other assistance, to local governments which will encourage the recovery and recycling of solid wastes.

(2) Provide technical information and assistance to state and local jurisdictions, the public, and private industry on solid waste recovery and/or recycling.

(3) Procure and expend funds available from federal agencies and other sources to assist the implementation by local governments of solid waste recovery and/or recycling programs, and projects.

(4) Conduct necessary research and studies to carry out the purposes of this chapter.

(5) Encourage and assist local governments and private industry to develop pilot solid waste recovery and/or recycling projects.

(6) Monitor, assist with research, and collect data for use in assessing feasibility for others to develop solid waste recovery and/or recycling projects.

(7) Make periodic recommendations to the governor and the legislature on actions and policies which would further implement the objectives of *this 1976 amendatory act. [1975-'76 2nd ex.s. c 41 § 5.]

*Reviser's note: "this 1976 amendatory act" [1975-'76 2nd ex.s. c 41] consists of amendments to RCW 70.93.020, 70.93.190, 70.95.010, 70.95.020, 70.95.030, 70.95.040, 70.95.070, and to RCW 70.95.263, 70.95.265 and 70.95.267.

70.95.265 Department to cooperate with public and private departments, agencies and associations. The department shall work closely with the department of commerce and economic development, the department of general administration, and with other state departments and agencies, the Washington state association of counties, the association of Washington cities, and business associations, to carry out the objectives and purposes of *this 1976 amendatory act. [1975-'76 2nd ex.s. c 41 § 6.]

*Reviser's note: "this 1976 amendatory act", see note following RCW 70.95.263.

70.95.267 Department authorized to use referendum 26 (chapter 43.83A RCW) funds for dispersal to local governments. The department is authorized to use referendum 26 (chapter 43.83A RCW) funds of the Washington futures account to disburse to local governments in developing solid waste recovery and/or recycling projects. [1975-'76 2nd ex.s. c 41 § 10.]

70.95.900 Authority and responsibility of utilities and transportation commission not changed. Nothing in this act shall be deemed to change the authority or responsibility of the Washington utilities and transportation commission to regulate all intrastate carriers. [1969 ex.s. c 134 § 27.]

70.95.910 Severability—1969 ex.s. c 134. 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 provisions to other persons or circumstances is not affected. [1969 ex.s. c 134 § 28.]

70.95.911 Severability—1975-'76 2nd ex.s. c 41. If any provision of this 1976 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. [1975-'76 2nd ex.s. c 41 § 11.]

Chapter 70.95A
POLLUTION CONTROL—MUNICIPAL
BONDING AUTHORITY

Sections

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70.95A.920 Severability—1973 c 132.
70.95A.930 Acquisitions by port districts under RCW 53.08.040—Prior rights or obligations.
70.95A.940 Severability—1975 c 6.

70.95A.010 Legislative declaration—Liberal construction. The legislature finds:

(1) That environmental damage seriously endangers the public health and welfare;

(2) That such environmental damage results from air, water, and other resources pollution and from solid waste disposal, noise and other environmental problems;

(3) That to abate or control such environmental damage antipollution devices, equipment, and facilities must be acquired, constructed and installed;

(4) That the tax exempt financing permitted by Section 103 of the Internal Revenue Code of 1954, as amended, and authorized by this chapter results in lower costs of installation of pollution control facilities;

(5) That such lower costs benefit the public with no measurable cost impact;

(6) That the method of financing provided in this chapter is in the public interest and its use serves a public purpose in (a) protecting and promoting the health and welfare of the citizens of the cities, towns, counties, and port districts and of this state by encouraging and accelerating the installation of facilities for abating or controlling and preventing environmental damage and (b) in attracting and retaining environmentally sound industry in this state which reduces unemployment and provides a more diversified tax base.

(7) For the reasons set forth in subsection (6) of this section, the provisions of this chapter relating to port districts and all proceedings heretofore or hereafter taken by port districts pursuant thereto are, and shall be deemed to be, for industrial development as authorized by Article 8, section 8 of the Washington state Constitution.

This chapter shall be liberally construed to accomplish the intentions expressed in this section. [1975 c 6 § 1; 1973 c 132 § 2.]

70.95A.020 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Municipality" shall mean any city, town, county, or port district in the state;

(2) "Facility" or "facilities" shall mean any land, building, structure, machinery, system, fixture, appurtenance, equipment or any combination thereof, or any interest therein, and all real and personal properties deemed necessary in connection therewith whether or not now in existence, which is used or to be used by any person, corporation or municipality in furtherance of the purpose of abating, controlling or preventing pollution;

(3) "Pollution" shall mean any form of environmental pollution, including but not limited to water pollution, air pollution, land pollution, solid waste disposal, thermal pollution, radiation contamination, or noise pollution;

(4) "Governing body" shall mean the body or bodies in which the legislative powers of the municipality are vested;

(5) "Mortgage" shall mean a mortgage or a mortgage and deed of trust or other security device; and

(6) "Department" shall mean the state department of ecology. [1973 c 132 § 3.]

70.95A.030 Municipalities—Powers. In addition to any other powers which it may now have, each municipality shall have the following powers:

(1) To acquire, whether by construction, purchase, devise, gift or lease, or any one or more of such methods, one or more facilities which shall be located within, or partially within the municipality;

(2) To lease, lease with option to purchase, sell or sell by installment sale, any or all of the facilities upon such terms and conditions as the governing body may deem advisable but which shall at least fully reimburse the municipality for all debt service on any bonds issued to finance the facilities and for all costs incurred by the municipality in financing and operating the facilities and as shall not conflict with the provisions of this chapter;

(3) To issue revenue bonds for the purpose of defraying the cost of acquiring or improving any facility or facilities or refunding any bonds issued for such purpose and to secure the payment of such bonds as provided in this chapter. Revenue bonds may be issued in one or more series or issues where deemed advisable, and each such series or issue may have the same or different maturity dates, interest rates, priorities on revenues available for payment of such bonds and priorities on security available for assuring payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with the provisions of this chapter. [1973 c 132 § 4.]

70.95A.035 Actions by municipalities validated. All actions heretofore taken by any municipality in conformity with the provisions of this chapter and the provisions of *this 1975 amendatory act hereby made applicable thereto relating to pollution control facilities, including but not limited to all bonds issued for such purposes, are hereby declared to be valid, legal and binding in all respects. [1975 c 6 § 4.]

***Reviser's note:** "this 1975 amendatory act" [1975 c 6] consists of amendments to RCW 70.95A.010 and 70.95A.040 and the enactment of RCW 53.08.040, 70.95A.035, 70.95A.045, 70.95A.912, 70.95A.940, and an uncodified section declaring an emergency and providing an effective date.

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.040 Municipalities—Revenue bonds for pollution control facilities—Authorized—Construction—Sale, conditions—Form, terms. (1) All bonds issued by a municipality under the authority of this chapter shall be secured solely by revenues derived from the lease or sale of the facility. Bonds and interest coupons issued under the authority of this chapter shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds. The use of the municipality's name on revenue bonds authorized hereunder shall not be construed to be the giving or lending of the municipality's financial guarantee or pledge, i.e. credit to any private person, firm, or corporation as the term credit is used in Article 8, section 7 of the Washington state Constitution.

(2) The bonds referred to in subsection (1) of this section, may (a) be executed and delivered at any time and from time to time, (b) be in such form and denominations, (c) be of such tenor, (d) be in registered or bearer form either as to principal or interest or both, and may provide for conversion between registered and coupon bonds of varying denominations, (e) be payable in such installments and at such time or times not exceeding forty years from their date, (f) be payable at such place or places, (g) bear interest at such rate or rates as may be determined by the governing body, payable at such place or places within or without this state and evidenced in such manner, (h) be redeemable prior to maturity, with or without premium, and (i) contain such provisions not inconsistent herewith, as shall be deemed for the best interest of the municipality and provided for in the proceedings of the governing body whereunder the bonds shall be authorized to be issued.

(3) Any bonds issued under the authority of this chapter, may be sold at public or private sale in such manner and at such time or times as may be determined by the governing body to be most advantageous. The municipality may pay all expenses, premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance thereof from the proceeds of the sale of said bonds or from the revenues of the facilities.

(4) All bonds issued under the authority of this chapter, and all interest coupons applicable thereto shall be investment securities within the meaning of the uniform commercial code and shall be deemed to be issued by a political subdivision of the state.

(5) The proceeds from any bonds issued under this chapter shall be used only for purposes qualifying under Section 103(c)(4)(f) of the Internal Revenue Code of 1954, as amended. [1975 c 6 § 3; 1973 c 132 § 5.]

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.045 Proceeds of bonds are separate trust funds—Municipal treasurer, compensation. The proceeds of any bonds heretofore or hereafter issued in conformity with the authority of this chapter, together with interest and premiums thereon, and any revenues used to pay or redeem any of such bonds, together with interest and any premiums thereon, shall be separate trust funds and used only for the purposes permitted herein and shall not be considered to be money of the municipality. The services of the treasurer of a municipality, if such treasurer is or has been used, were and are intended to be for the administrative convenience of receipt and payment of nonpublic moneys only for which reasonable compensation may be charged by such treasurer or municipality. [1975 c 6 § 2.]

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.050 Revenue bonds—Security—Scope—Default—Authorization proceedings. (1) The principal of and interest on any bonds issued under the authority of this chapter (a) shall be secured by a pledge of the revenues derived from the sale or lease of the facilities out of which such bonds shall be made payable, (b) may be secured by a mortgage covering all or any part of the facilities, (c) may be secured by a pledge or assignment of the lease of such facilities, or (d) may be secured by a trust agreement or such other security device as may be deemed most advantageous by the governing body.

(2) The proceedings under which the bonds are authorized to be issued under the provisions of this chapter, and any mortgage given to secure the same may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting (a) the fixing and collection of rents for any facilities covered by such proceedings or mortgage, (b) the terms to be incorporated in the lease of such facilities, (c) the maintenance and insurance of such facilities, (d) the creation and maintenance of special funds from the revenues of such facilities, and (e) the rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage or trust agreement, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this chapter: *Provided*, That in making any such agreements or provisions a municipality shall not have the power to obligate itself except with respect to the facilities and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(3) The proceedings authorizing any bonds under the provisions of this chapter and any mortgage securing such bonds may provide that, in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the

facilities in accordance with such proceedings or the provisions of such mortgage.

(4) Any mortgage made under the provisions of this chapter, to secure bonds issued thereunder, may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the mortgaged property sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or any charge upon their general credit or against their taxing powers.

(5) The proceedings authorizing the issuance of bonds hereunder may provide for the appointment of a trustee or trustees for the protection of the holders of the bonds, whether or not a mortgage is entered into as security for such bonds. Any such trustee may be a bank with trust powers or a trust company and shall be located in the United States, within or without the state of Washington, shall have the immunities, powers and duties provided in said proceedings, and may, to the extent permitted by such proceedings, hold and invest funds deposited with it in direct obligations of the United States, obligations guaranteed by the United States or certificates of deposit of a bank (including the trustee) which are continuously secured by such obligations of or guaranteed by the United States. Any bank acting as such trustee may, to the extent permitted by such proceedings, buy bonds issued hereunder to the same extent as if it were not such trustee. Said proceedings may provide for one or more co-trustees, and any co-trustee may be any competent individual over the age of twenty-one years or a bank having trust powers or trust company within or without the state. The proceedings authorizing the bonds may provide that some or all of the proceeds of the sale of the bonds, the revenues of any facilities, the proceeds of the sale of any part of a facility, of any insurance policy or of any condemnation award be deposited with the trustee or a co-trustee and applied as provided in said proceedings. [1973 c 132 § 6.]

70.95A.060 Facilities—Leases authorized. Prior to the issuance of the bonds authorized by this chapter, the municipality may lease the facilities to a lessee or lessees under an agreement providing for payment to the municipality of such rentals as will be sufficient (a) to pay the principal of and interest on the bonds issued to finance the facilities, (b) to pay the taxes on the facilities, (c) to build up and maintain any reserves deemed by the governing body to be advisable in connection therewith, and (d) unless the agreement of lease obligates the lessees to pay for the maintenance and insurance of the facilities, to pay the costs of maintaining the facilities in good repair and keeping the same properly insured. Subject to the limitations of this chapter, the lease or extensions or modifications thereof may contain such other terms and conditions as may be mutually

acceptable to the parties, and notwithstanding any other provisions of law relating to the sale of property owned by municipalities, such lease may contain an option for the lessees to purchase the facilities on such terms and conditions with or without consideration as may be mutually acceptable to the parties. [1973 c 132 § 7.]

70.95A.070 Facilities—Revenue bonds—Refunding provisions. Any bonds issued under the provisions of this chapter and at any time outstanding may at any time and from time to time be refunded by a municipality by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, together with any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith: *Provided*, That an issue of refunding bonds may be combined with an issue of additional revenue bonds on any facilities. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: *Provided further*, That the holders of any bonds to be so refunded shall not be compelled without their consent to surrender their bonds for payment or exchange except on the terms expressed on the face thereof. Any refunding bonds issued under the authority of this chapter shall be subject to the provisions contained in RCW 70.95A.040 and may be secured in accordance with the provisions of RCW 70.95A.050. [1973 c 132 § 8.]

70.95A.080 Revenue bonds—Disposition of proceeds. The proceeds from the sale of any bonds issued under authority of this chapter shall be applied only for the purpose for which the bonds were issued: *Provided*, That any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold: *And provided further*, That if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds. The cost of acquiring or improving any facilities shall be deemed to include the following: The actual cost of acquiring or improving real estate for any facilities; the actual cost of construction of all or any part of the facilities which may be constructed, including architects' and engineers' fees, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition or improvements; and the interest on such bonds for a reasonable time prior to construction, during construction, and for a time not exceeding six months after completion of construction. [1973 c 132 § 9.]

70.95A.090 Facilities—Sale or lease—Certain restrictions on municipalities not applicable. The facilities shall be constructed, reconstructed, and improved

and shall be leased, sold or otherwise disposed of in the manner determined by the governing body in its sole discretion and any requirement of competitive bidding, lease performance bonds or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property of a municipality is not applicable to any action taken under authority of this chapter. [1973 c 132 § 10.]

70.95A.100 Facilities—Department of ecology certification. Upon request by a municipality or by a user of the facilities the department of ecology may in relation to chapter 54, Laws of 1972 ex. sess. and this chapter issue its certificate stating that the facilities (1) as designed are in furtherance of the purpose of abating, controlling or preventing pollution, and/or (2) as designed or as operated meet state and local requirements for the control of pollution. This section shall not be construed as modifying the provisions of RCW 82.34.030; chapter 70.94 RCW; or chapter 90.48 RCW. [1973 c 132 § 11.]

70.95A.910 Construction—1973 c 132. Nothing in this chapter shall be construed as a restriction or limitation upon any powers which a municipality might otherwise have under any laws of this state, but shall be construed as cumulative. [1973 c 132 § 12.]

70.95A.912 Construction—1975 c 6. *This 1975 amendatory act shall be liberally construed to accomplish the intention expressed herein. [1975 c 6 § 6.]

*Reviser's note: "This 1975 amendatory act" [1975 c 6] see note following RCW 70.95A.035.

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.920 Severability—1973 c 132. If any provision of this 1973 act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this 1973 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. [1973 c 132 § 13.]

70.95A.930 Acquisitions by port districts under RCW 53.08.040—Prior rights or obligations. All acquisitions by port districts pursuant to RCW 53.08.040 may, at the option of a port commission, be deemed to be made under this chapter, or under both: *Provided*, That nothing contained in this chapter shall impair rights or obligations under contracts entered into before March 19, 1973. [1973 c 132 § 14.]

70.95A.940 Severability—1975 c 6. If any provision of *this 1975 amendatory act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of *this 1975 amendatory 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. [1975 c 6 § 7.]

*Reviser's note: "this 1975 amendatory act" [1975 c 6] see note following RCW 70.95A.035.

Chapter 70.95B DOMESTIC WASTE TREATMENT PLANTS— CERTIFICATION AND REGULATION OF OPERATORS

Sections

- 70.95B.010 Legislative declaration.
- 70.95B.020 Definitions.
- 70.95B.030 Waste treatment plant operators—Certification required.
- 70.95B.040 Administration of chapter—Rules and regulations—Director's duties.
- 70.95B.050 Waste treatment plants—Classification.
- 70.95B.060 Criteria and guidelines.
- 70.95B.070 Board of examiners for wastewater operator certification—Created—Members—Qualifications—Terms—Powers and duties—Travel expenses.
- 70.95B.080 Certificates—When examination not required.
- 70.95B.090 Certificates—Issuance and renewal conditions.
- 70.95B.100 Certificates—Revocation procedures.
- 70.95B.110 Administration of chapter—Powers and duties of director.
- 70.95B.120 Violations.
- 70.95B.130 Certificates—Reciprocity with other states.
- 70.95B.140 Penalties for violations—Injunctions.
- 70.95B.150 Administration of chapter—Receipts—Payment to general fund.
- 70.95B.900 Effective date—1973 c 139.

Reviser's note: Chapter 139, Laws of 1973 has been codified as chapter 70.95B RCW which appears to be in accordance with code organization. Section 16 of chapter 139 had directed that the chapter be added to Title 43 RCW. For other laws pertaining to environmental protection and pollution control, see chapters 70.93, 70.94, 70.95, 70.95A, and 90.48 RCW.

70.95B.010 Legislative declaration. The legislature declares that competent operation of waste treatment plants plays an important part in the protection of the environment of the state and therefore it is of vital interest to the public. In order to protect the public health and to conserve and protect the water resources of the state, it is necessary to provide for the classifying of all domestic wastewater treatment plants; to require the examination and certification of the persons responsible for the supervision and operation of such systems; and to provide for the promulgation of rules and regulations to carry out this chapter. [1973 c 139 § 1.]

70.95B.020 Definitions. As used in this chapter unless context requires another meaning:

- (1) "Director" means the director of the department of ecology.
- (2) "Department" means the department of ecology.
- (3) "Board" means the water and wastewater operator certification board of examiners established by RCW 70.95B.070.
- (4) "Certificate" means a certificate of competency issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.
- (5) "Waste treatment plant" means a facility used in the collection, transmission, storage, pumping, treatment or discharge of any liquid or waterborne waste, whether of domestic origin or a combination of domestic, commercial or industrial waste, and which by its design

requires the presence of an operator for its operation. It shall not include any facility used exclusively by a single family residence nor septic tanks with subsoil absorption nor industrial wastewater works.

(6) "Operator" means an individual employed or appointed by any county, sewer district, municipality, public or private corporation, company, institution, person, or the state of Washington who is designated by the employing or appointing officials as the person on-site in responsible charge of the actual operation of a waste treatment plant.

(7) "Nationally recognized association of certification authorities" shall mean that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and wastewater facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones. [1973 c 139 § 2.]

70.95B.030 Waste treatment plant operators—Certification required. As provided for in this chapter, the operator in responsible charge of the day-to-day operation of a waste treatment plant shall be certified. When a waste treatment plant is normally operated for more than one shift, the man responsible for each shift operation shall also be certified. Operating personnel not required to be certified by this chapter are encouraged to become certified hereunder on a voluntary basis. [1973 c 139 § 3.]

70.95B.040 Administration of chapter—Rules and regulations—Director's duties. The director, with the approval of the board, shall adopt and enforce such rules and regulations as may be necessary for the administration of this chapter. The rules and regulations shall include, but not be limited to, provisions for the qualification and certification of operators for different classifications of waste treatment plants. [1973 c 139 § 4.]

70.95B.050 Waste treatment plants—Classification. The director shall classify all waste treatment plants with regard to the size, type, and other conditions affecting the complexity of such treatment plants and the skill, knowledge, and experience required of an operator to supervise the operation of such facilities to protect the public health and the state's water resources. [1973 c 139 § 5.]

70.95B.060 Criteria and guidelines. The director is authorized when taking action pursuant to RCW 70.95B.040 and 70.95B.050 to consider generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities. [1973 c 139 § 6.]

70.95B.070 Board of examiners for wastewater operator certification—Created—Members—Qualifications—Terms—Powers and duties—Travel expenses. For the purpose of carrying out the provisions of this chapter, a board of examiners for wastewater

operator certification shall be appointed. This board may serve in a common capacity for the certification of both water and wastewater plant and system operators. One member shall be named from the department of ecology, by its director to serve at his pleasure, and one member from the department of social and health services by its secretary, to serve at his pleasure, and one member who is required to employ a certified operator and who holds the position of city manager, city engineer, director of public works, superintendent of utilities, or an equivalent position who will be appointed by the governor. The governor shall also appoint two members who are operators holding a certificate of at least the second highest operator classification for wastewater plant operators established by regulation of the director, and if authorized in a water supply system operator certification act, two members who are operators holding a certificate of at least the second highest classification for waterworks operators established pursuant to such act.

The employer representative shall be appointed for an initial one-year term and the operators for initial terms of two and three years respectively. Thereafter, the members appointed by the governor shall serve for a three-year period. Vacancies shall be filled for the remainder for an unexpired term by the appointing authorities.

This board shall assist in the development of rules and regulations, shall prepare, administer and evaluate examinations of operator competency as required in this chapter, and shall recommend the issuance or revocation of certificates. The board shall determine when and where the examinations shall be held. The examination shall be held at least three times annually.

Each member appointed by the governor shall serve without compensation, but shall be reimbursed for travel expenses while engaged in the business of the board as prescribed in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 161; 1973 c 139 § 7.]

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

70.95B.080 Certificates—When examination not required. Certificates shall be issued without examination under the following conditions:

(1) Certificates, in appropriate classifications, shall be issued without application fee to operators who, on July 1, 1973, hold certificates of competency attained by examination under the voluntary certification program sponsored jointly by the state department of social and health services, health services division, and the Pacific Northwest pollution control association.

(2) Certificates, in appropriate classifications, shall be issued to persons certified by a governing body or owner to have been the operator in responsible charge of a waste treatment plant on July 1, 1973. A certificate so issued will be valid only for the existing plant.

(3) A nonrenewable certificate, temporary in nature, may be issued for a period not to exceed twelve months, to an operator to fill a vacated position required to have a certified operator. Only one such certificate may be

issued subsequent to each instance of vacation of any such position. [1973 c 139 § 8.]

70.95B.090 Certificates—Issuance and renewal conditions. The issuance and renewal of a certificate shall be subject to the following conditions:

(1) A certificate shall be issued if the operator has satisfactorily passed a written examination, or has met the requirements of RCW 70.95B.080, and has met the requirements specified in the rules and regulations as authorized by this chapter, and has paid the department an application fee of ten dollars.

(2) The term for all certificates shall be from the first of January of the year of issuance until the thirty-first of December of the same year. Every certificate shall be renewed annually upon the payment of a five dollar renewal fee and satisfactory evidence presented to the director that the operator demonstrates continued professional growth in the field.

(3) An individual who fails to renew the certificate before the end of certification year, upon notice by the director shall have his certificate suspended for thirty days. If, during the suspension period, the renewal is not completed, the director shall give notice of revocation to the employer and to the operator and the certificate will be revoked ten days after such notice is given. An operator whose certificate has been revoked must reapply for certification and will be requested to meet the requirements of a new applicant. [1973 c 139 § 9.]

70.95B.100 Certificates—Revocation procedures. The director may, with the recommendation of the board and after a hearing before the same, revoke a certificate found to have been obtained by fraud or deceit, or for gross negligence in the operation of a waste treatment plant, or for violating the requirements of this chapter or any lawful rule, order or regulation of the department. No person whose certificate is revoked under this section shall be eligible to apply for a certificate for one year from the effective date of this final order or revocation. [1973 c 139 § 10.]

70.95B.110 Administration of chapter—Powers and duties of director. To carry out the provisions and purposes of this chapter, the director is authorized and empowered to:

(1) Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as he deems appropriate with other state, federal, or interstate agencies, municipalities, education institutions, or other organizations or individuals.

(2) Receive financial and technical assistance from the federal government and other public or private agencies.

(3) Participate in related programs of the federal government, other states, interstate agencies, or other public or private agencies or organizations.

(4) Upon request, furnish reports, information, and materials relating to the certification program authorized by this chapter to federal, state, or interstate agencies, municipalities, education institutions, and other organizations and individuals.

(5) Establish adequate fiscal controls and accounting procedures to assure proper disbursement of and accounting for funds appropriated or otherwise provided for the purpose of carrying out the provisions of this chapter. [1973 c 139 § 11.]

70.95B.120 Violations. On and after one year following July 1, 1973, it shall be unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency to operate a waste treatment plant unless the operator of the plant or system is duly certified by the director under the provisions of this chapter or any lawful rule, order, or regulation of the department. It shall also be unlawful for any person to perform the duties of an operator as defined in this chapter, or in any lawful rule, order, or regulation of the department, without being duly certified under the provisions of this chapter. [1973 c 139 § 12.]

70.95B.130 Certificates—Reciprocity with other states. On or after July 1, 1973, certification of operators by any state which, as determined by the director, accepts certifications made or certification requirements deemed satisfied pursuant to the provisions of this chapter, shall be accorded reciprocal treatment and shall be recognized as valid and sufficient within the purview of this chapter, if in the judgment of the director the certification requirements of such state are substantially equivalent to the requirements of this chapter or any rules or regulations promulgated hereunder.

In making determinations pursuant to this section, the director shall consult with the board and may consider any generally applicable criteria and guidelines developed by the nationally recognized association of certification authorities. [1973 c 139 § 13.]

70.95B.140 Penalties for violations—Injunctions. Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency violating any provisions of this chapter or the rules and regulations adopted hereunder, is guilty of a misdemeanor. Each day of operation in such violation of this chapter or any rules or regulations adopted hereunder shall constitute a separate offense. Upon conviction, violators shall be fined an amount not exceeding one hundred dollars for each offense. It shall be the duty of the prosecuting attorney or the attorney general, as appropriate, to secure injunctions of continuing violations of any provisions of this chapter or the rules and regulations adopted hereunder. [1973 c 139 § 14.]

70.95B.150 Administration of chapter—Receipts—Payment to general fund. All receipts realized in the administration of this chapter shall be paid into the general fund. [1973 c 139 § 15.]

70.95B.900 Effective date—1973 c 139. This 1973 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 on July 1, 1973. [1973 c 139 § 17.]

Chapter 70.96 ALCOHOLISM

Sections

- 70.96.085 Powers and duties of department—Assistance in development and operation of public or private facilities.
- 70.96.092 Approval of facilities, plans or programs prerequisite to receiving state financial assistance.
- 70.96.094 Approval of facilities, plans or programs prerequisite to receiving state financial assistance—Financial support from other sources required before state approval given.
- 70.96.095 Cities and counties—Sharing in use of facilities or programs maintained by other city or county.
- 70.96.096 Cities and counties—Eligibility for liquor taxes and profits—Support of alcoholism program required.
- 70.96.150 Inability to contribute to cost no bar to admission.
- 70.96.160 County alcoholism administrative board—Members—Qualifications—Terms—Powers, duties—Executive director.

Reviser's note: The law relating to alcoholism embodied in this chapter was first enacted by chapter 136, Laws of 1957 and codified as chapter 71.16 RCW which latter act was repealed and reenacted by chapter 28, Laws of 1959 as chapter 72.03 RCW; the latter enactment was in turn repealed and reenacted by chapter 85, Laws of 1959 codified herein, in which the powers and duties relating to alcoholism were transferred from the department of institutions to the department of health. The department of health was abolished by RCW 43.20A.500, and the research, educational, and treatment program for the rehabilitation of alcoholics was transferred to the department of social and health services by RCW 43.20A.180.

Alcoholism treatment benefit provisions

group disability contracts: RCW 48.21.160–48.21.190.

health care services contracts: RCW 48.44.240.

70.96.085 Powers and duties of department—Assistance in development and operation of public or private facilities. The department of health is authorized to provide financial assistance and consultative services to assist in the development, establishment, construction, maintenance, and operation of community, public, or private nonprofit facilities throughout the state for the referral, care, custody, treatment, recovery and rehabilitation of alcoholics. [1965 ex.s. c 143 § 1.]

Liquor revolving fund, disbursement to universities and department of health: RCW 66.08.180.

70.96.092 Approval of facilities, plans or programs prerequisite to receiving state financial assistance. All facilities, plans, or programs receiving financial assistance under RCW 70.96.085 shall be approved by the department of social and health services before any state funds are used to provide such financial assistance. Whenever such facilities, plans, or programs have not been approved as required or do not receive the required approval, the funds set aside for such facility, plan, or program shall be made available for allocation to facilities, plans, or programs which have received the required approval of the department. In addition, whenever there is an excess of funds set aside for a particular approved facility, plan or program, the excess shall be made available for allocation to other approved facilities, plans, or programs. [1971 ex.s. c 104 § 1.]

70.96.094 Approval of facilities, plans or programs prerequisite to receiving state financial assistance—Financial support from other sources required before state approval given. Except as hereinafter provided, the

secretary of social and health services shall not approve any facility, plan, or program for financial assistance under RCW 70.96.085 unless at least ten percent of the amount expended for such facility, plan or program is provided from local public or private sources. When deemed necessary to maintain public standards of care in the facility, plan, or program, the secretary may require such facility, plan, or program to provide up to fifty percent of the total expended for such program through fees, gifts, contributions or volunteer services, the value of such gifts, contributions and volunteer services to be determined by the secretary. [1971 ex.s. c 104 § 2.]

70.96.095 Cities and counties—Sharing in use of facilities or programs maintained by other city or county. Any city, town or county not having its own facility or program for the treatment and rehabilitation of alcoholics may share in the use of a facility or program maintained by another city or county so long as it contributes no less than two percent of its share of liquor taxes and profits to the support of the same. [1972 ex.s. c 77 § 1.]

70.96.096 Cities and counties—Eligibility for liquor taxes and profits—Support of alcoholism program required. In order to be eligible to receive its share of liquor taxes and profits, each city and county shall be required to devote no less than two percent of such share of liquor taxes and profits to the support of an alcoholism program approved by the alcoholism administrative board authorized by RCW 70.96.160 and the secretary of the state department of social and health services. [1973 1st ex.s. c 155 § 3; 1972 ex.s. c 77 § 2.]

Liquor revolving fund disbursements: RCW 66.08.180.

70.96.150 Inability to contribute to cost no bar to admission. The department shall not refuse admission for diagnosis, evaluation, guidance or treatment to any applicant because it is determined that the applicant is financially unable to contribute fully or in part to the cost of any services or facilities available under the program on alcoholism. [1959 c 85 § 15.]

70.96.160 County alcoholism administrative board—Members—Qualifications—Terms—Powers, duties—Executive director. Any county or combination of counties acting jointly by agreement, hereinafter referred to as "county", may create an alcoholism administrative board. Such board shall be composed of not less than seven nor more than fifteen members, who shall be representative of the community, shall include at least two recovered alcoholics, and shall include consumer and minority group representation. No more than four elected or appointed city or county officials may serve on such board at the same time. Members of the board shall serve three year terms and until their successors are appointed and qualified. They shall not be compensated for the performance of their duties as members of the board, but may be paid subsistence rates and mileage in the amounts prescribed by RCW 36.17.030 as now or hereafter amended.

The alcoholism administrative board, the county and the department of social and health services shall, in the area of alcoholism prevention, treatment and education, and the administration, planning and funding thereof, have the same duties, responsibilities, powers, liabilities and authorities as are provided by chapter 71.24 RCW with respect to the mental health administrative board, the county and the department of social and health services.

An executive director of the board may be appointed by the county commissioners subject to the approval of the board. Applicants for such position need not be residents of the county, city or state, and may be employed on a full or part time basis. [1973 1st ex.s. c 155 § 2.]

Chapter 70.96A UNIFORM ALCOHOLISM AND INTOXICATION TREATMENT

Sections

- 70.96A.010 Declaration of policy.
- 70.96A.020 Definitions.
- 70.96A.030 Alcoholism program.
- 70.96A.040 Program authority.
- 70.96A.050 Duties of department.
- 70.96A.060 Interdepartmental coordinating committee.
- 70.96A.070 Citizens advisory council—Qualifications—Duties.
- 70.96A.080 Comprehensive program for treatment—Regional facilities.
- 70.96A.090 Standards for public and private treatment facilities—Enforcement procedures—Penalties.
- 70.96A.100 Acceptance for treatment—Rules.
- 70.96A.110 Voluntary treatment of alcoholics.
- 70.96A.120 Treatment and services for intoxicated persons and persons incapacitated by alcohol.
- 70.96A.140 Involuntary commitment of alcoholics.
- 70.96A.150 Records of alcoholics and intoxicated persons.
- 70.96A.160 Visitation and communication with patients.
- 70.96A.170 Emergency service patrol—Establishment—Rules.
- 70.96A.180 Payment for treatment—Financial ability of patients.
- 70.96A.190 Criminal laws limitations.
- 70.96A.200 Transfer of property and funds to department of social and health services.
- 70.96A.210 Transfer of appropriations.
- 70.96A.220 Duties of director of program planning and fiscal management regarding transfer of equipment, funds and appropriations.
- 70.96A.900 Short title.
- 70.96A.910 Application and construction.
- 70.96A.920 Severability—1972 ex.s. c 122.
- 70.96A.930 Section, subsection headings not part of law.

Reviser's note: Throughout this chapter "this act" has been translated to "this chapter" This act [1972 ex.s. c 122] consists of chapter 70.96A RCW, the amendment of RCW 9.87.010, 71.24.030 and the repeal of RCW 9.68.040, 70.96.010–70.96.030, 70.96.040–70.96.080, 70.96.090, 70.96.100–70.96.140, 70.96.900, and 71.08.010–71.08.090.

70.96A.010 Declaration of policy. It is the policy of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution solely because of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society. [1972 ex.s. c 122 § 1.]

Effective date—1972 ex.s. c 122. "Chapter 122, Laws of 1972 extraordinary session shall be effective January 1, 1975." [1973 c 92 § 1; 1972 ex.s. c 122 § 31.] This applies to chapter 70.96A RCW, to the amendment of RCW 9.87.010 and 71.24.030, and to the repeal of

RCW 9.68.040, 70.96.010–70.96.030, 70.96.040–70.96.080, 70.96.090, 70.96.100–70.96.140, 70.96.900, and 71.08.010–71.08.090.

Progress report: "The department of social and health services shall make and deliver a written progress report on the implementation of the uniform alcoholism and intoxication treatment act every ninety days up to the effective date of the act, January 1, 1975 to the appropriate committee of the legislative council, or its successor." [1973 c 92 § 2.]

Alcoholism treatment benefit provisions

group disability contracts: RCW 48.21.160–48.21.190.

health care services contracts: RCW 48.44.240.

70.96A.020 Definitions. For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Alcoholic" means a person who habitually lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted;

(2) "Approved treatment facility" means a treatment agency operating under the direction and control of the department of social and health services or providing treatment under this chapter through a contract with the department under RCW 70.96A.080(6) and meeting the standards prescribed in RCW 70.96A.090(1) and approved under RCW 70.96A.090(3);

(3) "Secretary" means the secretary of the department of social and health services;

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

(5) "Director" means the director of the division of alcoholism;

(6) "Emergency service patrol" means a patrol established under RCW 70.96A.170;

(7) "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, has his judgment so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment and constitutes a danger to himself, to any other person, or to property;

(8) "Incompetent person" means a person who has been adjudged incompetent by the superior court;

(9) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol;

(10) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient and emergency services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics, persons incapacitated by alcohol, and intoxicated persons. [1972 ex.s. c 122 § 2.]

70.96A.030 Alcoholism program. A discrete program of alcoholism is established within the department of social and health services, to be administered by a qualified person who has training and experience in handling alcoholism problems or the organization or administration of treatment services for persons suffering from alcoholism problems. [1972 ex.s. c 122 § 3.]

70.96A.040 Program authority. The department, in the operation of the alcoholism program may:

(1) Plan, establish, and maintain treatment programs as necessary or desirable;

(2) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including contracts with public and private agencies, organizations, and individuals to pay them for services rendered or furnished to alcoholics, persons incapacitated by alcohol, or intoxicated persons;

(3) Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services, or property from the federal government, the state, or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant;

(4) Administer or supervise the administration of the provisions relating to alcoholics and intoxicated persons of any state plan submitted for federal funding pursuant to federal health, welfare, or treatment legislation;

(5) Coordinate its activities and cooperate with alcoholism programs in this and other states, and make contracts and other joint or cooperative arrangements with state, local, or private agencies in this and other states for the treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons and for the common advancement of alcoholism programs;

(6) Keep records and engage in research and the gathering of relevant statistics;

(7) Do other acts and things necessary or convenient to execute the authority expressly granted to it; and

(8) Acquire, hold, or dispose of real property or any interest therein, and construct, lease, or otherwise provide treatment facilities for alcoholics, persons incapacitated by alcohol, and intoxicated persons. [1972 ex.s. c 122 § 4.]

70.96A.050 Duties of department. The department shall:

(1) Develop, encourage, and foster state-wide, regional, and local plans and programs for the prevention of alcoholism and treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons in cooperation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes;

(2) Coordinate the efforts and enlist the assistance of all public and private agencies, organizations, and individuals interested in prevention of alcoholism and treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons;

(3) Cooperate with public and private agencies in establishing and conducting programs to provide treatment for alcoholics, persons incapacitated by alcohol, and intoxicated persons who are clients of the correctional system.

(4) Cooperate with the superintendent of public instruction, state board of education, schools, police departments, courts, and other public and private agencies, organizations and individuals in establishing programs for the prevention of alcoholism and treatment of

alcoholics, persons incapacitated by alcohol, and intoxicated persons, and preparing curriculum materials thereon for use at all levels of school education;

(5) Prepare, publish, evaluate, and disseminate educational material dealing with the nature and effects of alcohol;

(6) Develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol;

(7) Organize and foster training programs for persons engaged in treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons;

(8) Sponsor and encourage research into the causes and nature of alcoholism and treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons, and serve as a clearing house for information relating to alcoholism;

(9) Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment;

(10) Advise the governor in the preparation of a comprehensive plan for treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons for inclusion in the state's comprehensive health plan;

(11) Review all state health, welfare, and treatment plans to be submitted for federal funding under federal legislation, and advise the governor on provisions to be included relating to alcoholism, persons incapacitated by alcohol, and intoxicated persons;

(12) Assist in the development of, and cooperate with, alcohol education and treatment programs for employees of state and local governments and businesses and industries in the state;

(13) Utilize the support and assistance of interested persons in the community to encourage alcoholics voluntarily to undergo treatment;

(14) Cooperate with public and private agencies in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated;

(15) Encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics, persons incapacitated by alcohol, and intoxicated persons and to provide them with adequate and appropriate treatment; and

(16) Encourage all health and disability insurance programs to include alcoholism as a covered illness. [1972 ex.s. c 122 § 5.]

70.96A.060 Interdepartmental coordinating committee. (1) An interdepartmental coordinating committee is established, composed of the superintendent of public instruction or his designee, the director of the department of motor vehicles or his designee, the executive secretary of the Washington state law enforcement training commission or his designee, and one or more

designees (not to exceed three) of the secretary of the department of social and health services. The committee shall meet at least twice annually at the call of the secretary, or his designee, who shall be its chairman. The committee shall provide for the coordination of, and exchange of information on, all programs relating to alcoholism, and shall act as a permanent liaison among the departments engaged in activities affecting alcoholics, persons incapacitated by alcohol, and intoxicated persons. The committee shall assist the secretary and director in formulating a comprehensive plan for prevention of alcoholism and for treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons.

(2) In exercising its coordinating functions, the committee shall assure that:

(a) The appropriate state agencies provide or assure all necessary medical, social, treatment, and educational services for alcoholics, persons incapacitated by alcohol, and intoxicated persons and for the prevention of alcoholism, without unnecessary duplication of services;

(b) The several state agencies cooperate in the use of facilities and in the treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons; and

(c) All state agencies adopt approaches to the prevention of alcoholism and the treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons consistent with the policy of this chapter. [1972 ex.s. c 122 § 6.]

70.96A.070 Citizens advisory council—Qualifications—Duties. Pursuant to the provisions of RCW 43.20A.360, there shall be a citizens advisory council composed of not less than seven nor more than fifteen members, at least two of whom shall be recovered alcoholics and two of whom shall be members of recognized organizations involved with problems of alcoholism. The remaining members shall be broadly representative of the community, shall include representation from business and industry, organized labor, the judiciary, and minority groups, chosen for their demonstrated concern with alcoholism problems. Members shall be appointed by the secretary. In addition to advising the department in carrying out the purposes of this chapter, the council shall develop and propose to the secretary for his consideration the rules and regulations for the implementation of the alcoholism programs of the department. The secretary shall thereafter adopt such rules and regulations as shall, in his judgment properly implement the alcoholism programs of the department consistent with the welfare of those to be served, the legislative intent and the public good. [1973 1st ex.s. c 155 § 1; 1972 ex.s. c 122 § 7.]

Effective date—1972 ex.s. c 122: See note following RCW 70.96A.010.

70.96A.080 Comprehensive program for treatment—Regional facilities. (1) The department shall establish by all appropriate means, including contracting for services, a comprehensive and coordinated program for the treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons.

(2) The program shall include, but not necessarily be limited to:

(a) Emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital or licensed medical institution:

(b) Inpatient treatment;

(c) Intermediate treatment; and

(d) Outpatient and follow-up treatment.

(3) The department shall provide for adequate and appropriate treatment for alcoholics, persons incapacitated by alcohol, and intoxicated persons admitted under RCW 70.96A.110 through 70.96A.140. Treatment may not be provided at a jail or prison except for inmates.

(4) All appropriate public and private resources shall be coordinated with and utilized in the program if possible.

(5) The department shall prepare, publish, and distribute annually a list of all approved public and private treatment facilities.

(6) The department may contract for the use of any facility as an approved public treatment facility if the secretary, subject to the policies of the department, considers this to be an effective and economical course to follow. [1972 ex.s. c 122 § 8.]

70.96A.090 Standards for public and private treatment facilities—Enforcement procedures—Penalties.

(1) The department shall establish standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility, and fix the fees to be charged by the department for the required inspections. The standards may concern the health standards to be met and standards of services and treatment to be afforded patients.

(2) The department periodically shall inspect approved public and private treatment facilities at reasonable times and in a reasonable manner.

(3) The department shall maintain a list of approved public and private treatment facilities at reasonable times and in a reasonable manner.

(4) Each approved public and private treatment facility shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may be removed from the list of approved treatment facilities, and its approval revoked or suspended.

(5) The division, after holding a hearing, may suspend, revoke, limit, or restrict an approval, or without hearing, refuse to grant an approval, for failure to meet the provisions of this chapter, or the standards established thereunder.

(6) The superior court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.

(7) Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him to enter and inspect

at reasonable times, and examine the books and accounts of, any approved public or private treatment facility refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter. [1972 ex.s. c 122 § 9.]

70.96A.100 Acceptance for treatment—Rules. The secretary shall adopt and may amend and repeal rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons. In establishing the rules, the secretary shall be guided by the following standards:

(1) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(2) A patient shall be initially assigned or transferred to outpatient or intermediate treatment, unless he is found to require inpatient treatment.

(3) A person shall not be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(5) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment. [1972 ex.s. c 122 § 10.]

70.96A.110 Voluntary treatment of alcoholics. (1) An alcoholic may apply for voluntary treatment directly to an approved treatment facility. If the proposed patient is a minor or an incompetent person, he, a parent, a legal guardian, or other legal representative may make the application.

(2) Subject to rules adopted by the secretary, the administrator in charge of an approved treatment facility may determine who shall be admitted for treatment. If a person is refused admission to an approved treatment facility, the administrator, subject to rules adopted by the secretary, shall refer the person to another approved treatment facility for treatment if possible and appropriate.

(3) If a patient receiving inpatient care leaves an approved treatment facility, he shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator in charge of the treatment facility that the patient is an alcoholic who requires help, the department may arrange for assistance in obtaining supportive services and residential facilities.

(4) If a patient leaves an approved public treatment facility, with or against the advice of the administrator in charge of the facility, the department may make reasonable provisions for his transportation to another facility or to his home. If he has no home he should be assisted in obtaining shelter. If he is less than fourteen years of age or an incompetent person the request for discharge from an inpatient facility shall be made by a

parent, legal guardian, or other legal representative or by the minor or incompetent if he was the original applicant. [1972 ex.s. c 122 § 11.]

70.96A.120 Treatment and services for intoxicated persons and persons incapacitated by alcohol. (1) An intoxicated person may come voluntarily to an approved treatment facility for treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he consents to the proffered help, may be assisted to his home, an approved treatment facility or other health facility.

(2) Except for a person who may be apprehended for possible violation of laws not relating to alcoholism or intoxication and except for a person who may be apprehended for possible violation of laws relating to driving or being in physical control of a vehicle while intoxicated and except for a person who may wish to avail himself of the provisions of RCW 46.20.308, a person who appears to be incapacitated by alcohol and who is in a public place or who has threatened, attempted, or inflicted physical harm on another, shall be taken into protective custody by the police or the emergency service patrol and as soon as practicable, but in no event beyond eight hours brought to an approved treatment facility for treatment. If no approved treatment facility is readily available he shall be taken to an emergency medical service customarily used for incapacitated persons. The police or the emergency service patrol, in detaining the person and in taking him to an approved treatment facility, is taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer or member of an emergency patrol may take reasonable steps including reasonable force if necessary to protect himself. A taking into protective custody under this section is not an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved treatment facility shall be examined by a qualified person. He may then be admitted as a patient or referred to another health facility, which provides emergency medical treatment, where it appears that such treatment may be necessary. The referring approved treatment facility shall arrange for his transportation.

(4) A person who is found to be incapacitated by alcohol at the time of his admission or to have become incapacitated at any time after his admission, may not be detained at the facility (a) once he is no longer incapacitated by alcohol, and (b) if he remains incapacitated by alcohol for more than forty-eight hours after admission as a patient, unless a petition is filed under RCW 70.96A.140, as now or hereafter amended. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved treatment facility, is not referred to another health facility, and has no funds, may be taken to his home, if any. If he has no home, the approved treatment facility shall assist him in obtaining shelter.

(6) If a patient is admitted to an approved treatment facility, his family or next of kin shall be notified as promptly as possible. If an adult patient who is not incapacitated requests that there be no notification, his request shall be respected.

(7) The police or members of the emergency service, who in good faith act in compliance with this chapter are performing in the course of their official duty and are not criminally or civilly liable therefor.

(8) If the person in charge of the approved treatment facility determines it is for the patient's benefit, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment. [1974 ex.s. c 175 § 1; 1972 ex.s. c 122 § 12.]

70.96A.140 Involuntary commitment of alcoholics.

(1) When the person in charge of a treatment facility, or his designee, receives information alleging that a person is incapacitated as a result of alcoholism, the person in charge, or his designee, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the information, may file a petition for commitment of such person with the superior court or district court. The petition shall allege that the person is an alcoholic who is incapacitated by alcohol, or that the person is an alcoholic who has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within two days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition. A physician employed by the petitioning facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no less than five and no more than ten days after the date the petition was filed unless the person petitioned against is presently being detained by the facility, pursuant to RCW 70.96A.120, as now or hereafter amended, in which case the hearing shall be held within forty-eight hours of the filing of the petition: *Provided, however,* That the above specified forty-eight hours shall be computed by including Saturdays but excluding Sundays and holidays: *Provided further,* That, the court may, upon motion of the person whose commitment is sought, or upon motion of petitioner with written permission of the person whose commitment is sought, or his counsel and, upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served by the treatment facility on the person whose commitment is sought, his next of kin, a parent or his legal guardian if he is a minor, and any other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person shall be present unless the court believes that his presence is likely to be injurious to him; in this event the court may deem it appropriate to appoint a guardian ad litem to represent him throughout the proceeding. If deemed advisable, the court may examine the person out of courtroom. If the person has refused to be examined by a licensed physician, he shall be given an opportunity to be examined by a court appointed licensed physician. If he refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him to the department for a period of not more than five days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination, the court finds that grounds for involuntary commitment have been established by clear, cogent, and convincing proof, it shall make an order of commitment to an approved treatment facility. It shall not order commitment of a person unless it determines that an approved treatment facility is able to provide adequate and appropriate treatment for him and the treatment is likely to be beneficial.

(5) A person committed under this section shall remain in the facility for treatment for a period of thirty days unless sooner discharged. At the end of the thirty day period, he shall be discharged automatically unless the facility, before expiration of the period, files a petition for his recommitment upon the grounds set forth in subsection (1) of this section for a further period of ninety days unless sooner discharged. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the facility shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) of this section who has not been discharged by the facility before the end of the ninety day period shall be discharged at the expiration of that period unless the facility, before expiration of the period, obtains a court order on the grounds set forth in subsection (1) of this section for recommitment for a further period not to exceed ninety days. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the facility shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) of this section are permitted.

(7) Upon the filing of a petition for recommitment under subsections (5) or (6) of this section, the court shall fix a date for hearing no less than five and no more than ten days after the date the petition was filed: *Provided,* That, the court may, upon motion of the person whose commitment is sought and upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served by the treatment

facility on the person whose commitment is sought, his next of kin, the original petitioner under subsection (1) of this section if different from the petitioner for recommitment, one of his parents or his legal guardian if he is a minor, and his attorney and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3) of this section.

(8) The facility shall provide for adequate and appropriate treatment of a person committed to its custody. A person committed under this section may be transferred from one approved public treatment facility to another if transfer is medically advisable.

(9) A person committed to the custody of a facility for treatment shall be discharged at any time before the end of the period for which he has been committed and he shall be discharged by order of the court if either of the following conditions are met:

(a) In case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that he is no longer an alcoholic or the likelihood no longer exists; or further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(b) In case of an alcoholic committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists.

(10) The court shall inform the person whose commitment or recommitment is sought of his right to contest the application, be represented by counsel at every stage of any proceedings relating to his commitment and recommitment, and have counsel appointed by the court or provided by the court, if he wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him regardless of his wishes. The person shall, if he is financially able, bear the costs of such legal service; otherwise such legal service shall be at public expense. The person whose commitment or recommitment is sought shall be informed of his right to be examined by a licensed physician of his choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(11) A person committed under this chapter may at any time seek to be discharged from commitment by writ of habeas corpus in a court of competent jurisdiction.

(12) The venue for proceedings under this section is the place in which person to be committed resides or is present. [1974 ex.s. c 175 § 2; 1972 ex.s. c 122 § 14.]

70.96A.150 Records of alcoholics and intoxicated persons. (1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1) of this section, the secretary may receive information from patients' records for purposes of research into the causes and treatment of alcoholism, and the evaluation of alcoholism and treatment programs. Information under this subsection shall

not be published in a way that discloses patients' names or otherwise discloses their identities. [1972 ex.s. c 122 § 15.]

70.96A.160 Visitation and communication with patients. (1) Subject to reasonable rules regarding hours of visitation which the secretary may adopt, patients in any approved treatment facility shall be granted opportunities for adequate consultation with counsel, and for continuing contact with family and friends consistent with an effective treatment program.

(2) Neither mail nor other communication to or from a patient in any approved treatment facility may be intercepted, read, or censored. The secretary may adopt reasonable rules regarding the use of telephone by patients in approved treatment facilities. [1972 ex.s. c 122 § 16.]

70.96A.170 Emergency service patrol—Establishment—Rules. (1) The state and counties, cities and other municipalities may establish or contract for emergency service patrols which are to be under the administration of the appropriate jurisdiction. A patrol consists of persons trained to give assistance in the streets and in other public places to persons who are intoxicated. Members of an emergency service patrol shall be capable of providing first aid in emergency situations and may transport intoxicated persons to their homes and to and from treatment facilities.

(2) The secretary shall adopt rules pursuant to chapter 34.04 RCW for the establishment, training, and conduct of emergency service patrols. [1972 ex.s. c 122 § 17.]

70.96A.180 Payment for treatment—Financial ability of patients. (1) If treatment is provided by an approved treatment facility or emergency treatment is provided by a facility under RCW 70.96A.080(2)(a), and the patient has not paid or is unable to pay the charge therefor, the facility is entitled to any payment (a) received by the patient or to which he may be entitled because of the services rendered, and (b) from any public or private source available to the facility because of the treatment provided to the patient.

(2) A patient in a facility, or the estate of the patient, or a person obligated to provide for the cost of treatment and having sufficient financial ability, is liable to the facility for cost of maintenance and treatment of the patient therein in accordance with rates established.

(3) The secretary shall adopt rules governing financial ability that take into consideration the income, savings and other personal and real property of the person required to pay, and any support being furnished by him to any person he is required by law to support. [1972 ex.s. c 122 § 18.]

70.96A.190 Criminal laws limitations. (1) No county, municipality, or other political subdivision may adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, being a common drunkard, or being found in an intoxicated condition as

one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

(2) No county, municipality, or other political subdivision may interpret or apply any law of general application to circumvent the provision of subsection (1) of this section.

(3) Nothing in this chapter affects any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery, or other equipment, or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times and places or by a particular class of persons; nor shall evidence of intoxication affect, other than as a defense, the application of any law, ordinance, resolution, or rule to conduct otherwise establishing the elements of an offense. [1972 ex.s. c 122 § 19.]

70.96A.200 Transfer of property and funds to department of social and health services. Upon the taking effect of this act, the responsible head of each agency transferred in whole or in part to the department of social and health services by *this act, shall deliver to the department of social and health services all books, documents, records, papers, files, or other writings, all cabinets, furniture, office equipment, motor vehicles, and other tangible property and all funds in its custody or under its control, used or held in the exercise of the powers and the performance of the duties and functions so transferred, along with all pending business before such agency: *Provided*, That, if the books, documents, records, papers, files and other writings pertaining to a function transferred by *this act to the department from agencies not abolished by this chapter are considered by the head of the agency from which such transfer is made to be essential to the performance of duties retained by such agency, the agency head may deliver to the division of alcoholism certified copies of such books, documents, records, papers, files and other writings. [1972 ex.s. c 122 § 23.]

*Reviser's note: "this act", see note following RCW 70.96A.020.

Effective date—1972 ex.s. c 122: See note following RCW 70.96A.010.

70.96A.210 Transfer of appropriations. Appropriations for the exercise of powers, duties and functions transferred to the department of social and health services from agencies that are not abolished by this chapter shall be transferred to and made available to the department in accordance with the provisions of RCW 70.96A.220. [1972 ex.s. c 122 § 24.]

70.96A.220 Duties of director of program planning and fiscal management regarding transfer of equipment, funds and appropriations. The transfer of equipment, funds and appropriations from agencies that are not abolished by *this act to the department of social and health services, as provided in the office of program planning and fiscal management, shall be accomplished in accordance with apportionments among the several

agencies by the director of the office of program planning and fiscal management, who shall have due consideration to the total of the appropriations to the several agencies, the size and nature of the functions to be transferred and the feasibility of segregating such equipment to the various functions. The director of the office of program planning and fiscal management shall certify such apportionments to the agencies affected and to the state auditor, the state treasurer and department of general administration, each of whom shall make the appropriate transfers and adjustments in their funds and appropriation accounts and equipment records in accordance with such certification. [1972 ex.s. c 122 § 25.]

*Reviser's note: "this act", see note following RCW 70.96A.020.

70.96A.900 Short title. This chapter may be cited as the "Uniform Alcoholism and Intoxication Treatment Act". [1972 ex.s. c 122 § 21.]

70.96A.910 Application and construction. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it. [1972 ex.s. c 122 § 22.]

70.96A.920 Severability—1972 ex.s. c 122. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [1972 ex.s. c 122 § 20.]

70.96A.930 Section, subsection headings not part of law. Section or subsection headings as used in this chapter do not constitute any part of the law. [1972 ex.s. c 122 § 27.]

Chapter 70.98

NUCLEAR ENERGY AND RADIATION

Sections	
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70.98.900	Severability—1961 c 207.
70.98.910	Effective date—1961 c 207.

70.98.920 Section headings not part of law.

Joint committee on nuclear energy: Chapter 44.38 RCW.

Nuclear, thermal power facilities, joint city, public utility district, electrical companies development: Chapter 54.44 RCW.

Nuclear energy promotion and development, powers and duties of department of commerce and economic development: RCW 43.31-.280-43.31.330.

70.98.010 Declaration of policy. It is the policy of the state of Washington in furtherance of its responsibility to protect the public health and safety and to encourage, insofar as consistent with this responsibility, the industrial and economic growth of the state and to institute and maintain a regulatory and inspection program for sources and uses of ionizing radiation so as to provide for (1) compatibility with the standards and regulatory programs of the federal government, (2) a single, effective system of regulation within the state, and (3) a system consonant insofar as possible with those of other states. [1975-'76 2nd ex.s. c 108 § 12; 1961 c 207 § 1.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

70.98.020 Purpose. It is the purpose of this chapter to effectuate the policies set forth in RCW 70.98.010 as now or hereafter amended by providing for:

(1) A program of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) A program to promote an orderly regulatory pattern within the state, among the states and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to byproduct, source, and special nuclear materials. [1975-'76 2nd ex.s. c 108 § 13; 1965 c 88 § 1; 1961 c 207 § 2.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

70.98.030 Definitions. (1) "Byproduct material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.

(3) (a) "General license" means a license effective pursuant to regulations promulgated by the state radiation control agency, without the filing of an application, to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing, byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(b) "Specific license" means a license, issued after application to use, manufacture, produce, transfer,

receive, acquire, own, or possess quantities of, or devices or equipment utilizing byproduct, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially.

(4) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Atomic Energy Commission, or any successor thereto, and other than federal government agencies licensed by the United States Atomic Energy Commission, or any successor thereto.

(5) "Source material" means (a) uranium, thorium, or any other material which the governor declares by order to be source material after the United States Atomic Energy Commission, or any successor thereto, has determined the material to be such; or (b) ores containing one or more of the foregoing materials, in such concentration as the governor declares by order to be source material after the United States Atomic Energy Commission, or any successor thereto, has determined the material in such concentration to be source material.

(6) "Special nuclear material" means (a) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the governor declares by order to be special nuclear material after the United States Atomic Energy Commission, or any successor thereto, has determined the material to be such, but does not include source material; or (b) any material artificially enriched by any of the foregoing, but does not include source material.

(7) "Registration" means registration with the state department of health by any person possessing a source of ionizing radiation in accordance with rules, regulations and standards adopted by the department of health.

(8) "Radiation source" means any type of device or substance which is capable of producing or emitting ionizing radiation. [1965 c 88 § 2; 1961 c 207 § 3.]

70.98.040 Nuclear energy promotion and development. The department of commerce and economic development through the division of nuclear energy development, known as the office of nuclear energy development, is hereby designated as the agency of state government for the promotion and development of nuclear energy in this state and shall, in addition to the powers and duties otherwise imposed by law, have the following general powers and duties:

(1) To advise the governor and the legislature with regard to the status of nuclear energy research, development, and education, and to make recommendations to the governor and the legislature designed to assure increasing progress in this field within the state.

(2) To advise and assist the governor and the legislature in developing and promoting a state policy for nuclear energy research, development, and education.

(3) To sponsor or conduct studies, collect and disseminate information, and issue periodic reports with regard to nuclear energy research, development, and education

and proposals for further progress in the field of nuclear energy, and the power to acquire land and facilities for such purposes is specifically delegated to the department.

(4) To foster and support research and education relating to nuclear energy through contracts or other appropriate means of assistance.

(5) To gather, maintain, and disseminate available information concerning appropriate sites throughout the state and the advantages of locating nuclear energy industries within the state.

(6) To keep the public informed with respect to nuclear energy development within the state and the activities of the state relating thereto. [1965 c 10 § 4; 1961 c 207 § 4.]

Reviser's note: The act which contained the 1965 amendment to this section (1965 c 10) also contained construction and severability sections. These sections are codified as RCW 43.31.310, 43.31.320 and 43.31.330.

Additional powers and duties of department of commerce and economic development as to nuclear energy promotion and development: RCW 43.31.300.

Division of nuclear energy development: RCW 43.31.040.

70.98.050 State radiation control agency. (1) The department of social and health services is designated as the state radiation control agency, hereinafter referred to as the agency, and shall be the state agency having sole responsibility for administration of the regulatory, licensing and radiation control provisions of this chapter.

(2) The secretary of social and health services shall be director of the agency, hereinafter referred to as the secretary, who shall perform the functions vested in the agency pursuant to the provisions of this chapter.

(3) The agency shall appoint a state radiological control officer, and in accordance with the laws of the state, fix his compensation and prescribe his powers and duties.

(4) The agency shall for the protection of the occupational and public health and safety:

(a) Develop programs for evaluation of hazards associated with use of ionizing radiation;

(b) Develop programs with due regard for compatibility with federal programs for regulation of byproduct, source, and special nuclear materials;

(c) Formulate, adopt, promulgate, and repeal codes, rules and regulations relating to control of sources of ionizing radiation;

(d) Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and with groups concerned with control of sources of ionizing radiation;

(e) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(f) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation;

(g) Collect and disseminate information relating to control of sources of ionizing radiation; including:

(i) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under the provisions of this chapter and any administrative or judicial action pertaining thereto; and

(iii) Maintenance of a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated, and proceedings thereon.

(h) In connection with any contested case as defined by RCW 34.04.010 or any other administrative proceedings as provided for in this chapter, have the power to issue subpoenas in order to compel the attendance of necessary witnesses and/or the production of records or documents. [1971 ex.s. c 189 § 10; 1970 ex.s. c 18 § 16; 1965 c 88 § 3; 1961 c 207 § 5.]

70.98.080 Rules and regulations—Licensing requirements and procedure—Registration of sources of ionizing radiation—Exemptions from registration or licensing. (1) The agency shall provide by rule or regulation for general or specific licensing of byproduct, source, special nuclear materials, or devices or equipment utilizing such materials, or other radioactive material occurring naturally or produced artificially. Such rule or regulation shall provide for amendment, suspension, or revocation of licenses. Such rule or regulation shall provide that:

(a) Each application for a specific license shall be in writing and shall state such information as the agency, by rule or regulation, may determine to be necessary to decide the technical, insurance, and financial qualifications, or any other qualification of the applicant as the agency may deem reasonable and necessary to protect the occupational and public health and safety. The agency may at any time after the filing of the application, and before the expiration of the license, require further written statements and shall make such inspections as the agency deems necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended, or revoked. In no event shall the agency grant a specific license to any applicant who has never possessed a specific license issued by a recognized state or federal authority until the agency has conducted an inspection which insures that the applicant can meet the rules, regulations and standards adopted pursuant to this chapter. All applications and statements shall be signed by the applicant or licensee. The agency may require any applications or statements to be made under oath or affirmation;

(b) Each license shall be in such form and contain such terms and conditions as the agency may by rule or regulation prescribe;

(c) No license issued under the authority of this chapter and no right to possess or utilize sources of ionizing radiation granted by any license shall be assigned or in any manner disposed of; and

(d) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations or orders issued in accordance with the provisions of this chapter.

(2) The agency may require registration of all sources of ionizing radiation.

(3) The agency may exempt certain sources of ionizing radiation or kinds of uses or users from the registration or licensing requirements set forth in this section when the agency makes a finding after approval of the technical advisory board that the exemption of such sources of ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(4) In promulgating rules and regulations pursuant to this chapter the agency shall, insofar as practical, strive to avoid requiring dual licensing, and shall provide for such recognition of other state or federal licenses as the agency shall deem desirable, subject to such registration requirements as the agency may prescribe. [1965 c 88 § 5; 1961 c 207 § 8.]

70.98.090 Inspection. The agency or its duly authorized representative shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this chapter and rules and regulations issued thereunder, except that entry into areas under the exclusive jurisdiction of the federal government, or security areas under the direct or indirect jurisdiction of the federal government, shall be effected only with the concurrence of the federal government or its duly designated representative. [1961 c 207 § 9.]

70.98.100 Records. (1) The agency shall require each person who possesses or uses a source of ionizing radiation to maintain necessary records relating to its receipt, use, storage, transfer, or disposal and such other records as the agency may require which will permit the determination of the extent of occupational and public exposure from the radiation source. Copies of these records shall be submitted to the agency on request. These requirements are subject to such exemptions as may be provided by rules.

(2) The agency may by rule and regulation establish standards requiring that personnel monitoring be provided for any employee potentially exposed to ionizing radiation and may provide for the reporting to any employee of his radiation exposure record. [1961 c 207 § 10.]

70.98.110 Federal-state agreements—Authorized—Effect as to federal licenses. (1) The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state pursuant to this chapter.

(2) Any person who, on the effective date of an agreement under subsection (1) above, possesses a license issued by the federal government shall be deemed to possess the same pursuant to a license issued under this chapter which shall expire either ninety days after the receipt from the state radiation control agency of a notice of expiration of such license or on the date of

expiration specified in the federal license, whichever is earlier. [1965 c 88 § 6; 1961 c 207 § 11.]

70.98.120 Inspection agreements and training programs. (1) The agency is authorized to enter into an agreement or agreements with the federal government, other states, or interstate agencies, whereby this state will perform on a cooperative basis with the federal government, other states, or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

(2) The agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this chapter and may make said personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this chapter. [1961 c 207 § 12.]

70.98.130 Administrative procedure. In any proceeding under this chapter for the issuance or modification or repeal of rules and regulations relating to control of sources of ionizing radiation, the agency shall comply with the requirements of RCW 34.04.020.

Notwithstanding any other provision of this chapter, whenever the agency finds that an emergency exists requiring immediate action to protect the public health, safety, or general welfare, the agency may, in accordance with RCW 34.04.030 without notice or hearing, issue a regulation or order reciting the existence of such emergency and require that such action be taken as is necessary to meet the emergency. As specified in RCW 34.04.030, such regulations or orders shall be effective immediately. [1961 c 207 § 13.]

70.98.140 Injunction proceedings. Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule, regulation, or order issued thereunder, the attorney general upon the request of the agency, after notice to such person and opportunity to comply, may make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the agency that such person has engaged in, or is about to engage in, any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted. [1961 c 207 § 14.]

70.98.150 Prohibited uses. It shall be unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess any source of ionizing radiation unless licensed by or registered with, or exempted by the agency in accordance with the provisions of this chapter. [1965 c 88 § 7; 1961 c 207 § 15.]

70.98.160 Impounding of materials. The agency shall have the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of

this chapter or any rules or regulations issued thereunder. [1961 c 207 § 16.]

70.98.170 Prohibition—Fluoroscopic x-ray shoe-fitting devices. The operation or maintenance of any x-ray, fluoroscopic, or other equipment or apparatus employing roentgen rays, in the fitting of shoes or other footwear or in the viewing of bones in the feet is prohibited. This prohibition does not apply to any licensed physician, surgeon, podiatrist, or any person practicing a licensed healing art, or any technician working under the direct and immediate supervision of such persons. [1973 c 77 § 27; 1961 c 207 § 17.]

70.98.180 Exemptions. This chapter shall not apply to the following sources or conditions:

(1) Radiation machines during process of manufacture, or in storage or transit: *Provided*, That this exclusion shall not apply to functional testing of such machines.

(2) Any radioactive material while being transported in conformity with regulations adopted by any federal agency having jurisdiction therein, and specifically applicable to the transportation of such radioactive materials.

(3) No exemptions under this section are granted for those quantities or types of activities which do not comply with the established rules and regulations promulgated by the Atomic Energy Commission, or any successor thereto. [1965 c 88 § 8; 1961 c 207 § 18.]

70.98.190 Professional uses. Nothing in this chapter shall be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the immediate direction of a licensed practitioner of the healing arts acting within the scope of his professional license. [1961 c 207 § 19.]

70.98.200 Penalties. Any person who violates any of the provisions of this chapter or rules, regulations, or orders in effect pursuant thereto shall be guilty of a gross misdemeanor. [1961 c 207 § 20.]

70.98.210 Recommended legislation. The agency shall study, formulate, and recommend to the legislature from time to time specific recommendations to further the purposes of this chapter. [1975-'76 2nd ex.s. c 108 § 14; 1961 c 207 § 24.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

70.98.900 Severability—1961 c 207. If any part, or parts, of this act shall be held unconstitutional, the remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included herein, if any such remaining part or parts can then be administered for the declared purposes of this act. [1961 c 207 § 21.]

70.98.910 Effective date—1961 c 207. The provisions of this act relating to the control of byproduct,

source and special nuclear materials shall become effective on the effective date of the agreement between the federal government and this state as authorized in RCW 70.98.110. All other provisions of this act shall become effective on the 30th day of June, 1961. [1961 c 207 § 23.]

70.98.920 Section headings not part of law. Section headings as used in this chapter do not constitute any part of the law. [1961 c 207 § 25.]

Chapter 70.100

EYE PROTECTION—PUBLIC AND PRIVATE EDUCATIONAL INSTITUTIONS

Sections

70.100.010 "Eye protection areas" defined.

70.100.020 Wearing of eye protection devices required—Furnishing of—Costs.

70.100.030 Standard requirement for eye protection devices.

70.100.040 Superintendent of public instruction to circulate instruction manual to public and private educational institutions.

70.100.010 "Eye protection areas" defined. As used in this chapter:

"Eye protection areas" means areas within vocational or industrial arts shops, science or other school laboratories, or schools within state institutional facilities as designated by the state superintendent of public instruction in which activities take place involving:

- (1) Hot molten metals or other molten materials;
- (2) Milling, sawing, turning, shaping, cutting, grinding, or stamping of any solid materials;
- (3) Heat treatment, tempering or kiln firing of any metal or other materials;
- (4) Gas or electric arc welding, or other forms of welding processes;
- (5) Corrosive, caustic, or explosive materials;
- (6) Custodial or other service activity potentially hazardous to the eye: *Provided*, That nothing in this chapter shall supersede regulations heretofore or hereafter established by the department of labor and industries respecting such activity; or
- (7) Any other activity or operation involving mechanical or manual work in any area that is potentially hazardous to the eye. [1969 ex.s. c 179 § 1.]

70.100.020 Wearing of eye protection devices required—Furnishing of—Costs. Every person shall wear eye protection devices when participating in, observing, or performing any function in connection with any courses or activities taking place in eye protection areas of any private or public school, college, university, or other public or private educational institution in this state, as designated by the superintendent of public instruction. The governing board or authority of any public school shall furnish the eye protection devices prescribed in RCW 70.100.030 without cost to all teachers and students in grades K-12 engaged in activities potentially dangerous to the human eye, and the governing body of each institution of higher education and vocational technical institute shall furnish such eye

protection devices free or at cost to all teachers and students similarly engaged at the institutions of higher education and vocational technical institutes. Eye protection devices shall be furnished on a loan basis to all visitors observing activities hazardous to the eye. [1969 ex.s. c 179 § 2.]

70.100.030 Standard requirement for eye protection devices. Eye protection devices, which shall include plano safety spectacles, plastic face shields or goggles, shall comply with the U.S.A. Standard Practice for Occupational and Educational Eye and Face Protection, Z87.1-1968 or later revisions thereof. [1969 ex.s. c 179 § 3.]

70.100.040 Superintendent of public instruction to circulate instruction manual to public and private educational institutions. The superintendent of public instruction, after consulting with the department of labor and industries, and the division of vocational education shall prepare and circulate to each public and private educational institution in this state within six months of the date of passage of this chapter, a manual containing instructions and recommendations for the guidance of such institutions in implementing the eye safety provisions of this chapter. [1969 ex.s. c 179 § 4.]

Chapter 70.104

PESTICIDES—HEALTH HAZARDS

Sections

- 70.104.010 Declaration.
- 70.104.020 "Pesticide" defined.
- 70.104.030 Powers and duties of department of social and health services.
- 70.104.040 Pesticide emergencies—Authority of department of agriculture not infringed upon.
- 70.104.050 Investigation of human exposure to pesticides.
- 70.104.060 Technical assistance, consultations and services to physicians and agencies authorized.

70.104.010 Declaration. The department of social and health services has responsibility to protect and enhance the public health and welfare. As a consequence, it must be concerned with both natural and artificial environmental factors which may adversely affect the public health and welfare. Dangers to the public health and welfare related to the use of pesticides require specific legislative recognition of departmental authority and responsibility in this area. [1971 ex.s. c 41 § 1.]

70.104.020 "Pesticide" defined. For the purposes of this chapter pesticide means, but is not limited to:

- (1) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed and any other form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered to be a pest or which the director of agriculture may declare to be a pest; or
- (2) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; or
- (3) Any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying

agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect thereof, and sold in a package or container separate from that of the pesticide with which it is to be used; or

(4) Any fungicide, rodenticide, herbicide, insecticide, and nematocide. [1971 ex.s. c 41 § 2.]

70.104.030 Powers and duties of department of social and health services. (1) The department of social and health services shall investigate all suspected human cases of pesticide poisoning and such cases of suspected pesticide poisoning of animals that may relate to human illness. In order to adequately investigate such cases, the department of social and health services shall have the power to:

(a) Take all necessary samples and human or animal tissue specimens for diagnostic purposes: *Provided*, That tissue, if taken from a living human, shall be taken from a living human only with the consent of a person legally qualified to give such consent;

(b) Secure any and all such information as may be necessary to adequately determine the nature and causes of any case of pesticide poisoning.

(2) The state department of social and health services shall, by rule and regulation adopted pursuant to the Administrative Procedure Act, chapter 34.04 RCW, as it now exists or is hereafter amended, and, in any event, with due notice and a hearing for the adoption of permanent rules, establish procedures for the prevention of any recurrence of poisoning and the department shall immediately notify the department of agriculture and other appropriate agencies of the results of its investigation for such action as the department of agriculture or such other agencies deem appropriate. The notification of such investigations and their results may include recommendations for further action by the appropriate department or agency. [1971 ex.s. c 41 § 3.]

70.104.040 Pesticide emergencies—Authority of department of agriculture not infringed upon. (1) In any case where an emergency relating to pesticides occurs that represents a hazard to the public due to toxicity of the material, the quantities involved or the environment in which the incident takes place, such emergencies including but not limited to fires, spillage, and accidental contamination, the person or agent of such person having actual or constructive control of the pesticides involved shall immediately notify the department of social and health services by telephone or the fastest available method.

(2) Upon notification or discovery of any pesticide emergency the department of social and health services shall:

(a) Make such orders and take such actions as are appropriate to assume control of the property and to dispose of hazardous substances, prevent further contamination, and restore any property involved to a non-hazardous condition. In the event of failure of any individual to obey and carry out orders pursuant to this section, the department of social and health services

shall have all power and authority to accomplish those things necessary to carry out such order. Any expenses incurred by the department of social and health services as a result of intentional failure of any individual to obey its lawful orders shall be charged as a debt against such individual.

(3) In any case where the department of social and health services has assumed control of property pursuant to this chapter, such property shall not be reoccupied or used until such time as written notification of its release for use is received from the secretary of the department of social and health services or his designee. Such action shall take into consideration the economic hardship, if any, caused by having the department assume control of property, and release shall be accomplished as expeditiously as possible. Nothing in this chapter shall prevent a farmer from continuing to process his crops and/or animals provided that it does not endanger the public health.

(4) The department shall recognize the pesticide industry's responsibility and active role in minimizing the effect of pesticide emergencies and shall provide for maximum utilization of these services.

(5) Nothing in this chapter shall be construed in any way to infringe upon or negate the authority and responsibility of the department of agriculture in its application and enforcement of the Washington Pesticide Act, *chapter 15.57 RCW and the Washington Pesticide Application Act, chapter 17.21 RCW. The department of social and health services shall work closely with the department of agriculture in the enforcement of this chapter and shall keep it appropriately advised. [1971 ex.s. c 41 § 4.]

*Reviser's note: "chapter 15.57 RCW" was repealed in its entirety by 1971 ex.s. c 190 § 47. Later enactment, see chapter 15.58 RCW.

70.104.050 Investigation of human exposure to pesticides. The department of social and health services shall investigate human exposure to pesticides, and in order to carry out such investigations shall have authority to secure and analyze appropriate specimens of human tissue and samples representing sources of possible exposure. [1971 ex.s. c 41 § 5.]

70.104.060 Technical assistance, consultations and services to physicians and agencies authorized. In order effectively to prevent human illness due to pesticides and to carry out the requirements of this chapter, the department of social and health services is authorized to provide technical assistance and consultation regarding health effects of pesticides to physicians and other agencies, and is authorized to operate an analytical chemical laboratory and may provide analytical and laboratory services to physicians and other agencies to determine pesticide levels in human and other tissues, and appropriate environmental samples. [1971 ex.s. c 41 § 6.]

Chapter 70.105 HAZARDOUS WASTE DISPOSAL

Sections

70.105.010 Definitions.

- 70.105.020 Standards and regulations—Adoption—Notice and hearing—Consultation with other agencies.
- 70.105.030 List and information to be furnished by depositor of hazardous waste—Rules and regulations.
- 70.105.040 Disposal site or facility—Acquisition—Disposal fee schedule.
- 70.105.050 Disposal at other than approved site prohibited—Exception.
- 70.105.060 Review of rules, regulations, criteria and fee schedules.
- 70.105.070 Criteria for receiving waste at disposal site.
- 70.105.080 Violations—Civil penalties—Enforcement—Procedure.
- 70.105.090 Violations—Gross misdemeanor.
- 70.105.100 Powers and duties of department.
- 70.105.110 Exceptions—Other acts not affected.

70.105.010 Definitions. The words and phrases defined in this section shall have the meanings indicated when used in this chapter unless the context clearly requires otherwise.

- (1) "Department" means the department of ecology.
- (2) "Director" means the director of the department of ecology or his designee.
- (3) "Disposal site" means a geographical site in or upon which extremely hazardous wastes are disposed of in accordance with the provisions of this chapter.
- (4) "Dispose or disposal" means the discarding or abandoning of extremely hazardous wastes or the treatment, decontamination, or recycling of such wastes once they have been discarded or abandoned.
- (5) "Dangerous wastes" means any discarded, useless, unwanted, or abandoned nonradioactive substances, including but not limited to certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:
 - (a) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or
 - (b) Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.
- (6) "Extremely hazardous waste" means any dangerous waste which
 - (a) will persist in a hazardous form for several years or more at a disposal site and which in its persistent form
 - (i) presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of man or wildlife, and
 - (ii) is highly toxic to man or wildlife
 - (b) if disposed of at a disposal site in such quantities as would present an extreme hazard to man or the environment.
- (7) "Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.
- (8) "Pesticide" shall have the meaning of the term as defined in RCW 15.58.030 as now or hereafter amended.

(9) "Solid waste advisory committee" means the same advisory committee as per RCW 70.95.040 through 70.95.070. [1975-'76 2nd ex.s. c 101 § 1.]

Appropriation—1975-'76 2nd ex.s. c 101 § 12: "There is appropriated to the department of ecology from the state and local improvements revolving account of the general fund out of the proceeds of the sale of bonds or notes as authorized in chapter 43.83A RCW (Referendum 26) the sum of one million three hundred fifty-three thousand dollars, or as much thereof as may be necessary, for the following purposes:

(1) The sum of one hundred fifty-three thousand dollars for the department to develop a comprehensive plan for the adequate treatment of extremely hazardous wastes being generated in the state, and the techniques and requirements necessary for adequately disposing of such wastes and for securing and monitoring disposal sites. The objective of such a comprehensive plan shall be to determine the statewide facility requirements for the adequate disposal of extremely hazardous wastes being generated in the state and for those expected to be generated in the future.

(2) The sum of one million two hundred thousand dollars for the purchase of real property on the Hanford Reservation by the department for the construction of a disposal site for extremely hazardous wastes and for the construction of facilities necessary for the operation of the disposal site including, but not limited to, security and monitoring facilities." [1975-'76 2nd ex.s. c 101 § 12.]

70.105.020 Standards and regulations—Adoption—Notice and hearing—Consultation with other agencies. The department after notice and public hearing shall:

(1) Adopt regulations designating as extremely hazardous wastes subject to the provisions of this chapter those substances which exhibit characteristics consistent with the definition provided in RCW 70.105.010(6);

(2) Adopt and may revise when appropriate, minimum standards and regulations for disposal of extremely hazardous wastes to protect against hazards to the public, and to the environment. Before adoption of such standards and regulations, the department shall consult with appropriate agencies of interested local governments and secure technical assistance from the department of agriculture, the department of social and health services, the department of game, the department of natural resources, the department of fisheries, the department of labor and industries, and the state fire marshal. [1975-'76 2nd ex.s. c 101 § 2.]

70.105.030 List and information to be furnished by depositor of hazardous waste—Rules and regulations.

(1) After the effective date of the regulations adopted by the department designating extremely hazardous wastes, any person planning to dispose of extremely hazardous waste as designated by the department shall provide the operator of the disposal site with a list setting forth the extremely hazardous wastes for disposal, the amount of such wastes, the general chemical and mineral composition of such waste listed by approximate maximum and minimum percentages, and the origin of any such waste. Such list, when appropriate; shall include information on antidotes, first aid, or safety measures to be taken in case of accidental contact with the particular extremely hazardous waste being disposed.

(2) The department shall adopt and enforce all rules and regulations including the form and content of the list, necessary and appropriate to accomplish the purposes of subsection (1) of this section. [1975-'76 2nd ex.s. c 101 § 3.]

70.105.040 Disposal site or facility—Acquisition—Disposal fee schedule. (1) The department

through the department of general administration, is authorized to acquire interests in real property from the federal government on the Hanford Reservation by gift, purchase, lease, or other means, to be used for the purpose of developing, operating, and maintaining an extremely hazardous waste disposal site or facility by the department, either directly or by agreement with public or private persons or entities: *Provided*, That lands acquired under this section shall not be inconsistent with a local comprehensive plan approved prior to January 1, 1976: *And provided further*, That no lands acquired under this section shall be subject to land use regulation by a local government.

(2) The department may establish an appropriate fee schedule for use of such disposal facilities to offset the cost of administration of this chapter and the cost of development, operation, maintenance, and perpetual management of the disposal site. If operated by a private entity, the disposal fee may be such as to provide a reasonable profit. [1975-'76 2nd ex.s. c 101 § 4.]

70.105.050 Disposal at other than approved site prohibited—Exception. No person shall dispose of designated extremely hazardous wastes at any disposal site in the state other than the disposal site established and approved for such purpose under provisions of this chapter, except when such wastes are going to a processing facility which will result in the waste being reclaimed, treated, detoxified, neutralized, or otherwise processed to remove its harmful properties or characteristics. [1975-'76 2nd ex.s. c 101 § 5.]

70.105.060 Review of rules, regulations, criteria and fee schedules. All rules, regulations, criteria, and fee schedules adopted by the department to implement the provisions of this chapter shall be reviewed by the solid waste advisory committee for the purpose of recommending revisions, additions, or modifications thereto as provided for the review of solid waste regulations and standards pursuant to chapter 70.95 RCW. [1975-'76 2nd ex.s. c 101 § 6.]

70.105.070 Criteria for receiving waste at disposal site. The department may elect to receive dangerous waste at the site provided under this chapter, provided

(1) it is upon request of the owner, producer, or person having custody of the waste, and

(2) upon the payment of a fee to cover disposal

(3) it can be reasonably demonstrated that there is no other disposal sites in the state that will handle such dangerous waste, and

(4) the site is designed to handle such a request or can be modified to the extent necessary to adequately dispose of the waste, or

(5) if a demonstrable emergency and potential threat to the public health and safety exists. [1975-'76 2nd ex.s. c 101 § 7.]

70.105.080 Violations—Civil penalties—Enforcement—Procedure. (1) Every person who fails to comply with any provision of RCW 70.105.010 through 70.105.090 or of the rules adopted thereunder

shall be subjected 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 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.

(2) The penalty provided for in this section 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, 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 for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department of ecology shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper. Any penalty imposed by the provisions of this section shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

(3) Any penalty imposed by this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or petition for review by the hearings board is filed. When such an application for remission or mitigation is made, any penalty incurred pursuant to this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application. Any penalty resulting from a decision of the hearings board shall become due and payable thirty days after receipt of the notice setting forth the decision.

(4) If the amount of any penalty is not paid to the department of ecology within thirty days after it becomes due and payable, the attorney general, upon the request of the 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. [1975-'76 2nd ex.s. c 101 § 8.]

70.105.090 Violations—Gross misdemeanor. In addition to the penalties imposed pursuant to RCW 70.105.080, any person who violates any provisions of RCW 70.105.010 through 70.105.090, or of the rules implementing RCW 70.105.010 through 70.105.090, and any person who knowingly aids or abets another in conducting any violation of any provisions of RCW 70.105.010 through 70.105.090, or of the rules implementing RCW 70.105.010 through 70.105.090, 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 in the county jail for not more than one year, for each separate violation. [1975-'76 2nd ex.s. c 101 § 9.]

70.105.100 Powers and duties of department. The department in performing its duties under this chapter may:

(1) Conduct studies and coordinate research programs pertaining to extremely hazardous waste management;

(2) Render technical assistance to generators of dangerous and extremely hazardous wastes and to state and local agencies in the planning and operation of hazardous waste programs;

(3) Encourage and provide technical assistance to waste generators to form and operate a "waste exchange" for the purpose of finding users for dangerous and extremely hazardous wastes that would otherwise be disposed of: *Provided*, That such technical assistance shall not violate the confidentiality of manufacturing processes; and

(4) Provide for appropriate surveillance and monitoring of extremely hazardous waste disposal practices in the state. [1975-'76 2nd ex.s. c 101 § 10.]

70.105.110 Exceptions—Other acts not affected.

(1) Nothing in this chapter shall apply to any radioactive waste or radioactive material.

(2) Nothing in this chapter shall alter, amend, or supersede the provisions of chapter 80.50 RCW, as now existing or hereafter amended, or grant to the department or to the solid waste advisory committee any authority regarding the regulation, certification, construction, or siting of thermal power plants, as defined in such acts. [1975-'76 2nd ex.s. c 101 § 11.]

Chapter 70.106

HAZARDOUS SUBSTANCES AND ARTICLES (WASHINGTON POISON PREVENTION ACT OF 1974)

Sections

70.106.010	Purpose.
70.106.020	Short title.
70.106.030	Definitions—Construction.
70.106.040	"Director" defined.
70.106.050	"Sale" defined.
70.106.060	"Household substance" defined.
70.106.070	"Package" defined.
70.106.080	"Special packaging" defined.
70.106.090	"Labeling" defined.
70.106.100	Standards for packaging.
70.106.110	Exceptions from packaging standards.
70.106.120	Adoption of rules and regulations under federal poison prevention packaging act.
70.106.130	Technical advisory committee.
70.106.140	Penalties.
70.106.900	Severability—1974 ex.s. c 49.
70.106.905	Saving—1974 ex.s. c 49.
70.106.910	Chapter cumulative and nonexclusive.

70.106.010 Purpose. The purpose of this chapter is to provide for special packaging to protect children from personal injury, serious illness or death resulting from

handling, using or ingesting household substances, and to provide penalties. [1974 ex.s. c 49 § 1.]

70.106.020 Short title. This chapter shall be cited as the Washington Poison Prevention Act of 1974. [1974 ex.s. c 49 § 2.]

70.106.030 Definitions—Construction. The definitions in RCW 70.106.040 through 70.106.090 unless the context otherwise requires shall govern the construction of this chapter. [1974 ex.s. c 49 § 3.]

70.106.040 "Director" defined. "Director" means the director of the department of agriculture of the state of Washington, or his duly authorized representative. [1974 ex.s. c 49 § 4.]

70.106.050 "Sale" defined. "Sale" means to sell, offer for sale, hold for sale, handle or use as an inducement in the promotion of a household substance or the sale of another article or product. [1974 ex.s. c 49 § 5.]

70.106.060 "Household substance" defined. "Household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is:

(1) A "hazardous substance", which means (a) any substance or mixture of substances or product which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children; (b) any substances which the director by regulation finds to meet the requirements of subsection (1)(a) of this section; (c) any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the director determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health, safety or welfare; and (d) any toy or other article intended for use by children which the director by regulation determines presents an electrical, mechanical or thermal hazard.

(2) A pesticide as defined in the Washington Pesticide Control Act, chapter 15.58 RCW as now or hereafter amended;

(3) A food, drug, or cosmetic as those terms are defined in the Uniform Washington Food, Drug and Cosmetic Act, chapter 69.04 RCW as now or hereafter amended; or

(4) A substance intended for use as fuel when stored in portable containers and used in the heating, cooking, or refrigeration system of a house; or

(5) Any other substance which the director may declare to be a household substance subsequent to a hearing as provided for under the provisions of chapter

34.04 RCW, Administrative Procedure Act, for the adoption of rules. [1974 ex.s. c 49 § 6.]

70.106.070 "Package" defined. "Package" means the immediate container or wrapping in which any household substance is contained for consumption, use, or storage by individuals in or about the household, and, for purposes of RCW 70.106.110(1)(b), also means any outer container or wrapping used in the retail display of any such substance to consumers. Such term does not include:

(1) Any shipping container or wrapping used solely for the transportation of any household substance in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or

(2) Any shipping container or outer wrapping used by retailers to ship or deliver any household substance to consumers unless it is the only such container or wrapping. [1974 ex.s. c 49 § 7.]

70.106.080 "Special packaging" defined. "Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time. [1974 ex.s. c 49 § 8.]

70.106.090 "Labeling" defined. "Labeling" means all labels and other written, printed, or graphic matter upon any household substance or its package, or accompanying such substance. [1974 ex.s. c 49 § 9.]

70.106.100 Standards for packaging. (1) The director may establish in accordance with the provisions of this chapter, by regulation, standards for the special packaging of any household substance if he finds that:

(a) The degree or nature of the hazard to children in the availability of such substance, by reason of its packaging is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using or ingesting such substance; and

(b) The special packaging to be required by such standard is technically feasible, practicable, and appropriate for such substance.

(2) In establishing a standard under this section, the director shall consider:

(a) The reasonableness of such standard;

(b) Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

(c) The manufacturing practices of industries affected by this chapter; and

(d) The nature and use of the household substance.

(3) In carrying out the provisions of this chapter, the director shall publish his findings, his reasons therefor, and citation of the sections of statutes which authorize his action.

(4) Nothing in this chapter authorizes the director to prescribe specific packaging designs, product content, package quantity, or, with the exception of authority granted in RCW 70.106.110(1)(b), labeling. In the case of a household substance for which special packaging is required pursuant to a regulation under this section, the director may in such regulation prohibit the packaging of such substance in packages which he determines are unnecessarily attractive to children.

(5) The director shall cause the regulations promulgated under this chapter to conform with the requirements or exemptions of the Federal Hazardous Substances Act and with the regulations or interpretations promulgated pursuant thereto. [1974 ex.s. c 49 § 10.]

70.106.110 Exceptions from packaging standards.

(1) For the purpose of making any household substance which is subject to a standard established under RCW 70.106.100 readily available to elderly or handicapped persons unable to use such substance when packaged in compliance with such standard, the manufacturer or packer, as the case may be, may package any household substance, subject to such a standard, in packaging of a single size which does not comply with such standard if:

(a) The manufacturer or packer also supplies such substance in packages which comply with such standard; and

(b) The packages of such substance which do not meet such standard bear conspicuous labeling stating: "This package for households without young children"; except that the director may by regulation prescribe a substitute statement to the same effect for packaging too small to accommodate such labeling.

(2) In the case of a household substance which is subject to such a standard and which is dispensed pursuant to an order of a physician, dentist, or other licensed medical practitioner authorized to prescribe, such substance may be dispensed in noncomplying packages only when directed in such order or when requested by the purchaser.

(3) In the case of a household substance subject to such a standard which is packaged under subsection (1) of this section in a noncomplying package, if the director determines that such substance is not also being supplied by a manufacturer or packer in popular size packages which comply with such standard, he may, after giving the manufacturer or packer an opportunity to comply with the purposes of this chapter, by order require such substance to be packaged by such manufacturer or packer exclusively in special packaging complying with such standard if he finds, after opportunity for hearing, that such exclusive use of special packaging is necessary to accomplish the purposes of this chapter. [1974 ex.s. c 49 § 11.]

70.106.120 Adoption of rules and regulations under federal poison prevention packaging act. One of the purposes of this chapter is to promote uniformity with the Poison Prevention Packaging Act of 1970 and rules and regulations adopted thereunder. In accordance with such declared purpose, all of the special packaging rules and

regulations adopted under the Poison Prevention Packaging Act of 1970 (84 Stat. 1670; 7 U.S.C. Sec. 135; 15 U.S.C. Sec. 1261, 1471-1476; 21 U.S.C. Sec. 343, 352, 353, 362) on July 24, 1974, are hereby adopted as rules and regulations applicable to this chapter. In addition, any rule or regulation adopted hereafter under said Federal Poison Prevention Act of 1970 concerning special packaging and published in the federal register shall be deemed to have been adopted under the provisions of this chapter. The director may, however, within thirty days of the publication of the adoption of any such rule or regulation under the Federal Poison Prevention Packaging Act of 1970, give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be conducted in accord with the provisions of chapter 34.04 RCW, Administrative Procedure Act, as now enacted or hereafter amended. [1974 ex.s. c 49 § 12.]

70.106.130 Technical advisory committee. For the purpose of carrying out the provisions of this chapter the director shall, within one hundred eighty days of July 24, 1974, appoint a technical advisory committee and appoint a chairman thereof, said committee to consist of one representative from each of the following:

(1) The secretary of the department of social and health services;

(2) The pharmacy board;

(3) A hospital specializing in child welfare and poison care;

(4) The packaging closures industry;

(5) University of Washington medical school;

(6) University of Washington school of pharmacy;

(7) A specialist in pesticide and chemical handling and control from Washington State University;

(8) The public;

(9) The dairy and food division of the department of agriculture; and

(10) A member of the Washington state society of pediatrics or its designee.

Members of the technical advisory committee who are not regular full time employees of a public agency or institution shall receive twenty-five dollars for each day or major portion thereof plus reimbursement for travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 163; 1974 ex.s. c 49 § 13.]

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

70.106.140 Penalties. Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor and is guilty of a gross misdemeanor for any subsequent offense, however, any offense committed more than five years after a previous conviction shall be considered a first offense. [1974 ex.s. c 49 § 16.]

70.106.900 Severability—1974 ex.s. c 49. If any provision of this 1974 act is declared unconstitutional, or

the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1974 ex.s. c 49 § 14.]

70.106.905 Saving—1974 ex.s. c 49. The enactment of this 1974 act shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on July 24, 1974. [1974 ex.s. c 49 § 15.]

70.106.910 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and non-exclusive and shall not affect any other remedy. [1974 ex.s. c 49 § 17.]

Chapter 70.107 NOISE CONTROL

Sections

70.107.010	Purpose.
70.107.020	Definitions.
70.107.030	Powers and duties of department.
70.107.040	Technical advisory committee.
70.107.050	Civil penalties.
70.107.060	Other rights, remedies, powers, duties and functions— Local control—Approval—Procedure.
70.107.070	Rules relating to motor vehicles—Violations— Penalty.
70.107.080	Exemptions.
70.107.900	Construction—Severability—1974 ex.s. c 183.
70.107.910	Short title.

70.107.010 Purpose. The legislature finds that inadequately controlled noise adversely affects the health, safety and welfare of the people, the value of property, and the quality of the environment. Antinoise measures of the past have not adequately protected against the invasion of these interests by noise. There is a need, therefore, for an expansion of efforts state-wide directed toward the abatement and control of noise, considering the social and economic impact upon the community and the state. The purpose of this chapter is to provide authority for such an expansion of efforts, supplementing existing programs in the field. [1974 ex.s. c 183 § 1.]

70.107.020 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

- (1) "Department" means the department of ecology.
- (2) "Director" means director of the department of ecology.
- (3) "Local government" means county or city government or any combination of the two.
- (4) "Noise" means the intensity, duration and character of sounds from any and all sources.
- (5) "Person" means any individual, corporation, partnership, association, governmental body, state, or other entity whatsoever. [1974 ex.s. c 183 § 2.]

70.107.030 Powers and duties of department. The department is empowered as follows:

- (1) The department, after consultation with state agencies expressing an interest therein, shall adopt, by rule, maximum noise levels permissible in identified

environments in order to protect against adverse affects of noise on the health, safety and welfare of the people, the value of property, and the quality of environment: *Provided*, That in so doing the department shall take also into account the economic and practical benefits to be derived from the use of various products in each such environment, whether the source of the noise or the use of such products in each environment is permanent or temporary in nature, and the state of technology relative to the control of noise generated by all such sources of the noise or the products.

(2) At any time after the adoption of maximum noise levels under subsection (1) of this section the department shall, in consultation with state agencies and local governments expressing an interest therein, adopt rules, consistent with the Federal Noise Control Act of 1972 (86 Stat. 1234; 42 U.S.C. Sec. 4901-4918 and 49 U.S.C. Sec. 1431), for noise abatement and control in the state designed to achieve compliance with the noise level adopted in subsection (1) of this section, including reasonable implementation schedules where appropriate, to insure that the maximum noise levels are not exceeded and that application of the best practicable noise control technology and practice is provided. These rules may include, but shall not be limited to:

- (a) Performance standards setting allowable noise limits for the operation of products which produce noise;
- (b) Use standards regulating, as to time and place, the operation of individual products which produce noise above specified levels considering frequency spectrum and duration: *Provided*, The rules shall provide for temporarily exceeding those standards for stated purposes; and

(c) Public information requirements dealing with disclosure of levels and characteristics of noise produced by products.

(3) The department may, as desirable in the performance of its duties under this chapter, conduct surveys, studies and public education programs, and enter into contracts.

(4) The department is authorized to apply for and accept moneys from the federal government and other sources to assist in the implementation of this chapter.

(5) The legislature recognizes that the operation of motor vehicles on public highways as defined in RCW 46.09.020 contributes significantly to environmental noise levels and directs the department, in exercising the rule-making authority under the provisions of this section, to give first priority to the adoption of motor vehicle noise performance standards.

(6) Noise levels and rules adopted by the department pursuant to this chapter shall not be effective prior to March 31, 1975. [1974 ex.s. c 183 § 3.]

70.107.040 Technical advisory committee. The director shall name a technical advisory committee to assist the department in the implementation of this chapter. Committee members shall be entitled to reimbursement for travel expenses as provided in RCW 43.03.050 and 43.03.060, as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 164; 1974 ex.s. c 183 § 4.]

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

70.107.050 Civil penalties. (1) Any person who violates any rule adopted by the department under this chapter shall be subject to a civil penalty not to exceed one hundred dollars. All violations of this chapter shall be administered pursuant to the provisions of chapter 34.04 RCW, the state administrative procedure act.

Penalties shall become due and payable thirty days from the date of receipt of a notice of penalty unless within such time said notice is appealed to the pollution control hearings board pursuant to the provisions of chapter 43.21B RCW and procedural rules adopted thereunder. In cases in which appeals are timely filed, penalties sustained by the pollution control hearings board shall become due and payable on the issuance of said board's final order in the appeal.

(2) Whenever penalties incurred pursuant to this section have become due and payable but remain unpaid, the attorney general shall, upon request of the director, bring an action in the name of the state of Washington, in the superior court of Thurston county or in the county in which the violation occurred for recovery of penalties incurred. In all such actions the procedures and rules of evidence shall be the same as in any other civil action. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund. [1974 ex.s. c 183 § 5.]

70.107.060 Other rights, remedies, powers, duties and functions—Local control—Approval—Procedure. (1) Nothing in this chapter shall be construed to deny, abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(2) Nothing in this chapter shall deny, abridge or alter any powers, duties and functions relating to noise abatement and control now or hereafter vested in any state agency, nor shall this chapter be construed as granting jurisdiction over the industrial safety and health of employees in work places of the state, as now or hereafter vested in the department of labor and industries.

(3) No local government shall adopt resolutions, ordinances, rules or regulations concerned with the control of noise which shall be effective prior to adoption of maximum noise levels and the rules adopted by the department pursuant to this chapter or January 31, 1975, whichever occurs sooner. Such resolutions, ordinances, rules, or regulations must be consistent with RCW 70.107.060(4).

(4) Standards and other control measures adopted by the department under this chapter shall be exclusive except as hereinafter provided. A local government may impose limits or control sources differing from those adopted or controlled by the department upon a finding that such requirements are necessitated by special conditions. No such noise limiting requirements of local government shall be valid unless first approved by the department. If disapproved the local government may appeal the decision to the pollution control hearings

board which shall decide the appeal on the basis of the provisions of this chapter, and the applicable regulations, together with such briefs, testimony, and oral argument as the hearings board in its discretion may require. In the determination of whether to grant any such approval, the department shall give consideration to the reasonableness and practicability of compliance with particular attention to the situation of stationary sources, the noise producing operations of which are conducted at or near jurisdictional boundaries.

(5) In carrying out the rule-making authority provided in this chapter, the department shall follow the procedures of the administrative procedure act, chapter 34.04 RCW, and shall take care that no rules adopted purport to exercise any powers preempted by the United States under federal law. [1974 ex.s. c 183 § 6.]

70.107.070 Rules relating to motor vehicles—Violations—Penalty. Any rule adopted under this chapter relating to the operation of motor vehicles on public highways shall be administered according to testing and inspection procedures adopted by rule by the state commission on equipment. Violation of any motor vehicle performance standard adopted pursuant to this chapter shall be a misdemeanor, enforced by such authorities and in such manner as violations of chapter 46.37 RCW. Violations subject to the provisions of this section shall be exempt from the provisions of RCW 70.107.050. [1974 ex.s. c 183 § 7.]

70.107.080 Exemptions. The department shall, in the exercise of rule-making power under this chapter, provide exemptions or specially limited regulations relating to recreational shooting and emergency or law enforcement equipment where appropriate in the interests of public safety.

The department in the development of rules under this chapter, shall consult and take into consideration the land use policies and programs of local government. [1974 ex.s. c 183 § 8.]

70.107.900 Construction—Severability—1974 ex.s. c 183. (1) This chapter shall be liberally construed to carry out its broad purposes.

(2) 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. [1974 ex.s. c 183 § 11.]

70.107.910 Short title. This chapter shall be known and may be cited as the "Noise Control Act of 1974". [1974 ex.s. c 183 § 12.]

Chapter 70.108 OUTDOOR MUSIC FESTIVALS

Sections

- 70.108.010 Legislative declaration.
- 70.108.020 Definitions.
- 70.108.030 Permits—Required—Compliance with rules and regulations.
- 70.108.040 Application for permit—Contents—Filing.

- 70.108.050 Approval or denial of permit—Corrections—Procedure—Judicial review.
- 70.108.060 Reimbursement of expenses incurred in reviewing request.
- 70.108.070 Cash deposit—Surety bond—Insurance.
- 70.108.080 Revocation of permits.
- 70.108.090 Drugs prohibited.
- 70.108.100 Proximity to schools, churches, homes.
- 70.108.110 Age of patrons.
- 70.108.120 Permits—Posting—Transferability.
- 70.108.130 Penalty.
- 70.108.140 Inspection of books and records.
- 70.108.150 Firearms—Penalty.
- 70.108.160 Preparations—Completion requirements.
- 70.108.170 Local regulations and ordinances not precluded.

Reviser's note: Throughout chapter 70.108 RCW the references to "this act" have been changed to "this chapter". "This act" [1971 ex.s. c 302] consists of this chapter, the 1971 amendments to RCW 9.40-.110-9.40.130, 9.41.010, 9.41.070, 26.44.050, 70.74.135, 70.74.270, 70.74.280, and to RCW 9.27.015 and 9.91.110.

70.108.010 Legislative declaration. The legislature hereby declares it to be the public interest, and for the protection of the health, welfare and property of the residents of the state of Washington to provide for the orderly and lawful conduct of outdoor music festivals by assuring that proper sanitary, health, fire, safety, and police measures are provided and maintained. This invocation of the police power is prompted by and based upon prior experience with outdoor music festivals where the enforcement of the existing laws and regulations on dangerous and narcotic drugs, indecent exposure, intoxicating liquor, and sanitation has been rendered most difficult by the flagrant violations thereof by a large number of festival patrons. [1971 ex.s. c 302 § 19.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

70.108.020 Definitions. For the purposes of this chapter the following words and phrases shall have the indicated meanings:

(1) "Outdoor music festival" or "music festival" or "festival" means an assembly of persons gathered primarily for outdoor, live or recorded musical entertainment, where the predicted attendance is two thousand persons or more and where the duration of the program is five hours or longer: *Provided*, That this definition shall not be applied to any regularly established permanent place of worship, stadium, athletic field, arena, auditorium, coliseum, or other similar permanently established places of assembly for assemblies which do not exceed by more than two hundred fifty people the maximum seating capacity of the structure where the assembly is held: *Provided, further*, That this definition shall not apply to government sponsored fairs held on regularly established fairgrounds nor to assemblies required to be licensed under other laws or regulations of the state.

(2) "Promoter" means any person or other legal entity issued a permit to conduct an outdoor music festival.

(3) "Applicant" means the promoter who has the right of control of the conduct of an outdoor music festival who applies to the appropriate legislative authority for a license to hold an outdoor music festival.

(4) "Issuing authority" means the legislative body of the local governmental unit where the site for an outdoor music festival is located.

(5) "Participate" means to knowingly provide or deliver to the festival site supplies, materials, food, lumber, beverages, sound equipment, generators, or musical entertainment and/or to attend a music festival. A person shall be presumed to have knowingly provided as that phrase is used herein after he has been served with a court order. [1971 ex.s c 302 § 21.]

70.108.030 Permits—Required—Compliance with rules and regulations. No person or other legal entity shall knowingly allow, conduct, hold, maintain, cause to be advertised or permit an outdoor music festival unless a valid permit has been obtained from the issuing authority for the operation of such music festival as provided for by this chapter. One such permit shall be required for each outdoor music festival. A permit may be granted for a period not to exceed sixteen consecutive days and a festival may be operated during any or all of the days within such period. Any person, persons, partnership, corporation, association, society, fraternal or social organization, failing to comply with the rules, regulations or conditions contained in this chapter shall be subject to the appropriate penalties as prescribed by this chapter. [1971 ex.s. c 302 § 22.]

70.108.040 Application for permit—Contents—Filing. Application for an outdoor music festival permit shall be in writing and filed with the clerk of the issuing authority wherein the festival is to be held. Said application shall be filed not less than ninety days prior to the first scheduled day of the festival and shall be accompanied with a permit fee in the amount of two thousand five hundred dollars. Said application shall include:

(1) The name of the person or other legal entity on behalf of whom said application is made: *Provided*, That a natural person applying for such permit shall be eighteen years of age or older;

(2) A financial statement of the applicant;

(3) The nature of the business organization of the applicant;

(4) Names and addresses of all individuals or other entities having a ten percent or more proprietary interest in the festival;

(5) The principal place of business of applicant;

(6) A legal description of the land to be occupied, the name and address of the owner thereof, together with a document showing the consent of said owner to the issuance of a permit, if the land be owned by a person other than the applicant;

(7) The scheduled performances and program;

(8) Written confirmation from the local health officer that he has reviewed and approved plans for site and development in accordance with rules, regulations and standards adopted by the state board of health. Such rules and regulations shall include criteria as to the following and such other matters as the state board of health deems necessary to protect the public's health:

(a) Submission of plans

(b) Site

- (c) Water supply
- (d) Sewage disposal
- (e) Food preparation facilities
- (f) Toilet facilities
- (g) Solid waste
- (h) Insect and rodent control
- (i) Shelter
- (j) Dust control
- (k) Lighting
- (l) Emergency medical facilities
- (m) Emergency air evacuation
- (n) Attendant physicians
- (o) Communication systems

(9) A written confirmation from the appropriate law enforcement agency from the area where the outdoor music festival is to take place, showing that traffic control and crowd protection policing have been contracted for or otherwise provided by the applicant meeting the following conditions:

(a) One person for each two hundred persons reasonably expected to be in attendance at any time during the event for purposes of traffic and crowd control.

(b) The names and addresses of all traffic and crowd control personnel shall be provided to the appropriate law enforcement authority: *Provided*, That not less than twenty percent of the traffic and crowd control personnel shall be commissioned police officers or deputy sheriffs: *Provided further*, That on and after February 25, 1972 any commissioned police officer or deputy sheriff who is employed and compensated by the promoter of an outdoor music festival shall not be eligible and shall not receive any benefits whatsoever from any public pension or disability plan of which he is a member for the time he is so employed or for any injuries received during the course of such employment.

(c) During the hours that the festival site shall be open to the public there shall be at least one regularly commissioned police officer employed by the jurisdiction wherein the festival site is located for every one thousand persons in attendance and said officer shall be on duty within the confines of the actual outdoor music festival site.

(d) All law enforcement personnel shall be charged with enforcing the provisions of this chapter and all existing statutes, ordinances and regulations.

(10) A written confirmation from the appropriate law enforcement authority that sufficient access roads are available for ingress and egress to the parking areas of the outdoor music festival site and that parking areas are available on the actual site of the festival or immediately adjacent thereto which are capable of accommodating one auto for every four persons in estimated attendance at the outdoor music festival site.

(11) A written confirmation from the department of natural resources, where applicable, and the office of the state fire marshal that all fire prevention requirements have been complied with.

(12) A written statement of the applicant that all state and local law enforcement officers, fire control officers and other necessary governmental personnel shall have free access to the site of the outdoor music festival.

(13) A statement that the applicant will abide by the provisions of this chapter.

(14) The verification of the applicant warranting the truth of the matters set forth in the application to the best of the applicant's knowledge, under the penalty of perjury. [1972 ex.s. c 123 § 1; 1971 ex.s. c 302 § 23.]

70.108.050 Approval or denial of permit—Corrections—Procedure—Judicial review. Within fifteen days after the filing of the application the issuing authority shall either approve or deny the permit to the applicant. Any denial shall set forth in detail the specific grounds therefor. The applicant shall have fifteen days after the receipt of such denial or such additional time as the issuing authority shall grant to correct the deficiencies set forth and the issuing authority shall within fifteen days after receipt of such corrections either approve or deny the permit. Any denial shall set forth in detail the specific grounds therefor.

After the applicant has filed corrections and the issuing authority has thereafter again denied the permit, the applicant may within five days after receipt of such second denial seek judicial review of such denial by filing a petition in the superior court for the county of the issuing authority. The review shall take precedence over all other civil actions and shall be conducted by the court without a jury. The court shall, upon request, hear oral argument and receive written briefs and shall either affirm the denial or order that the permit be issued. An applicant may not use any other procedure to obtain judicial review of a denial. [1972 ex.s. c 123 § 2; 1971 ex.s. c 302 § 24.]

70.108.060 Reimbursement of expenses incurred in reviewing request. Any local agency requested by an applicant to give written approval as required by RCW 70.108.040 may within fifteen days after the applicant has filed his application apply to the issuing authority for reimbursement of expenses reasonably incurred in reviewing such request. Upon a finding that such expenses were reasonably incurred the issuing authority shall reimburse the local agency therefor from the funds of the permit fee. The issuing authority shall prior to the first scheduled date of the festival return to the applicant that portion of the permit fee remaining after all such reimbursements have been made. [1971 ex.s. c 302 § 25.]

70.108.070 Cash deposit—Surety bond—Insurance. After the application has been approved the promoter shall deposit with the issuing authority, a cash deposit or surety bond. The bond or deposit shall be used to pay any costs or charges incurred to regulate health or to clean up afterwards outside the festival grounds or any extraordinary costs or charges incurred to regulate traffic or parking. The bond or other deposit shall be returned to the promoter when the issuing authority is satisfied that no claims for damage or loss will be made against said bond or deposit, or that the loss or damage claimed is less than the amount of the deposit, in which case the uncommitted balance thereof shall be returned:

Provided, That the bond or cash deposit or the uncommitted portion thereof shall be returned not later than thirty days after the last day of the festival.

In addition, the promoter shall be required to furnish evidence that he has in full force and effect a liability insurance policy in an amount of not less than one hundred thousand dollars bodily injury coverage per person covering any bodily injury negligently caused by any officer or employee of the festival while acting in the performance of his or her duties. The policy shall name the issuing authority of the permit as an additional named insured.

In addition, the promoter shall be required to furnish evidence that he has in full force and effect a one hundred thousand dollar liability property damage insurance policy covering any property damaged due to negligent failure by any officer or employee of the festival to carry out duties imposed by this chapter. The policy shall have the issuing authority of the permit as an additional named insured. [1972 ex.s. c 123 § 3; 1971 ex.s. c 302 § 26.]

70.108.080 Revocation of permits. Revocation of any permit granted pursuant to this chapter shall not preclude the imposition of penalties as provided for in this chapter and the laws of the state of Washington. Any permit granted pursuant to the provisions of this chapter to conduct a music festival shall be summarily revoked by the issuing authority when it finds that by reason of emergency the public peace, health, safety, morals or welfare can only be preserved and protected by such revocation.

Any permit granted pursuant to the provisions of this chapter to conduct a music festival may otherwise be revoked for any material violation of this chapter or the laws of the state of Washington after a hearing held upon not less than three days notice served upon the promoter personally or by certified mail.

Every permit issued under the provisions of this chapter shall state that such permit is issued as a measure to protect and preserve the public peace, health, safety, morals and welfare, and that the right of the appropriate authority to revoke such permit is a consideration of its issuance. [1971 ex.s. c 302 § 27.]

70.108.090 Drugs prohibited. No person, persons, partnership, corporation, association, society, fraternal or social organization to whom a music festival permit has been granted shall, during the time an outdoor music festival is in operation, knowingly permit or allow any person to bring upon the premises of said music festival, any narcotic or dangerous drug as defined by chapters 69.33 or 69.40 RCW, or knowingly permit or allow narcotic or dangerous drug to be consumed on the premises, and no person shall take or carry onto said premises any narcotic or dangerous drug. [1971 ex.s. c 302 § 28.]

70.108.100 Proximity to schools, churches, homes. No music festival shall be operated in a location which is closer than one thousand yards from any schoolhouse or church, or five hundred yards from any house, residence

or other human habitation unless waived by occupants. [1971 ex.s. c 302 § 29.]

70.108.110 Age of patrons. No person under the age of sixteen years shall be admitted to any outdoor music festival without the escort of his or her parents or legal guardian and proof of age shall be provided upon request. [1971 ex.s. c 302 § 30.]

70.108.120 Permits—Posting—Transferability. Any permit granted pursuant to this chapter shall be posted in a conspicuous place on the site of the outdoor music festival and such permit shall be not transferable or assignable without the consent of the issuing authority. [1971 ex.s. c 302 § 31.]

70.108.130 Penalty. Any person who shall wilfully fail to comply with the rules, regulations and conditions set forth in this chapter or who shall aid or abet such a violation or failure to comply, shall be deemed guilty of a gross misdemeanor. [1971 ex.s. c 302 § 32.]

70.108.140 Inspection of books and records. The department of revenue shall be allowed to inspect the books and records of any outdoor music festival during the period of operation of the festival and after the festival has concluded for the purpose of determining whether or not the tax laws of this state are complied with. [1972 ex.s. c 123 § 4.]

70.108.150 Firearms—Penalty. It shall be unlawful for any person, except law enforcement officers, to carry, transport or convey, or to have in his possession or under his control any firearm while on the site of an outdoor music festival.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars and not more than two 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. [1972 ex.s. c 123 § 5.]

70.108.160 Preparations—Completion requirements. All preparations required to be made by the provisions of this chapter on the music festival site shall be completed thirty days prior to the first day scheduled for the festival. Upon such date or such earlier date when all preparations have been completed, the promoter shall notify the issuing authority thereof, and the issuing authority shall make an inspection of the festival site to determine if such preparations are in reasonably full compliance with plans submitted pursuant to RCW 70.108.040. If a material violation exists the issuing authority shall move to revoke the music festival permit in the manner provided by RCW 70.108.080. [1972 ex.s. c 123 § 6.]

70.108.170 Local regulations and ordinances not precluded. Nothing in this chapter shall be construed as precluding counties, cities and other political subdivisions of the state of Washington from enacting ordinances or regulations for the control and regulation of

outdoor music festivals nor shall this chapter repeal any existing ordinances or regulations. [1972 ex.s. c 123 § 7.]

Chapter 70.110
FLAMMABLE FABRICS—CHILDREN'S
SLEEPWEAR

Sections

- 70.110.010 Short title.
- 70.110.020 Legislative finding.
- 70.110.030 Definitions.
- 70.110.040 Compliance required.
- 70.110.050 Attorney general or prosecuting attorneys authorized to bring actions to restrain or prevent violations.
- 70.110.060 Penalties.
- 70.110.070 Strict liability.
- 70.110.080 Personal service of process—Jurisdiction of courts.
- 70.110.900 Provisions additional.
- 70.110.910 Severability—1973 1st ex.s. c 211.

70.110.010 Short title. This chapter may be known and cited as the "Flammable Fabrics Act". [1973 1st ex.s. c 211 § 1.]

70.110.020 Legislative finding. The legislature hereby finds and declares that fabric related burns from children's sleepwear present an immediate and serious danger to the infants and children of this state. The legislature therefore declares it to be in the public interest, and for the protection of the health, property, and welfare of the residents of this state to herein provide for flammability standards for children's sleepwear. [1973 1st ex.s. c 211 § 2.]

70.110.030 Definitions. As used in this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Person" means an individual, partnership, corporation, association, or any other form of business enterprise, and every officer thereof.

(2) "Children's sleepwear" means any product of wearing apparel from infant size up to and including size fourteen which is sold or intended for sale for the primary use of sleeping or activities related to sleeping, such as nightgowns, pajamas, and similar or related items such as robes, but excluding diapers and underwear.

(3) "Fabric" means any material (except fiber, filament, or yarn for other than retail sale) woven, knitted, felted, or otherwise produced from or in combination with any material or synthetic fiber, film, or substitute therefor which is intended for use, or which may reasonably be expected to be used, in children's sleepwear.

(4) The term "infant size up to and including size six-x" means the sizes defined as infant through and including six-x in Department of Commerce Voluntary Standards, Commercial Standard 151-50, "Body Measurements for the Sizing of Apparel for Infants, Babies, Toddlers, and Children", Commercial Standard 153, "Body Measurements for the Sizing of Apparel for Girls", and Commercial Standard 155, "Body Measurements for the Sizing of Boys' Apparel".

(5) "Fabric related burns" means burns that would not have been incurred but for the fact that sleepwear worn at the time of the burns did not comply with commercial standards promulgated by the secretary of commerce of the United States in March, 1971, identified as Standard for the Flammability of Children's Sleepwear (DOC FF 3-71) 36 F.R. 14062 and by the Flammable Fabrics Act 15 U.S.C. 1193. [1973 1st ex.s. c 211 § 3.]

70.110.040 Compliance required. It shall be unlawful to manufacture for sale, sell, or offer for sale any new and unused article of children's sleepwear which does not comply with the standards established in the Standard for the Flammability of Children's Sleepwear (DOC FF 3-71), 36 F.R. 14062 and the Flammable Fabrics Act, 15 U.S.C. 1191-1204. [1973 1st ex.s. c 211 § 4.]

70.110.050 Attorney general or prosecuting attorneys authorized to bring actions to restrain or prevent violations. The attorney general or the prosecuting attorney of any county within the state may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter. [1973 1st ex.s. c 211 § 5.]

70.110.060 Penalties. Any violation of this chapter is punishable, upon conviction, by a fine not exceeding five thousand dollars or by confinement in the county jail for not exceeding one year, or both. [1973 1st ex.s. c 211 § 6.]

70.110.070 Strict liability. Any person who violates RCW 70.110.040 shall be strictly liable for fabric-related burns. [1973 1st ex.s. c 211 § 7.]

70.110.080 Personal service of process—Jurisdiction of courts. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has violated any provision of this chapter. Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185, as now or hereafter amended. [1973 1st ex.s. c 211 § 8.]

70.110.900 Provisions additional. The provisions of this chapter shall be in addition to and not a substitution for or limitation of any other law. [1973 1st ex.s. c 211 § 9.]

70.110.910 Severability—1973 1st ex.s. c 211. 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. [1973 1st ex.s. c 211 § 10.]

Chapter 70.112
FAMILY MEDICINE—EDUCATION AND
RESIDENCY PROGRAMS

Sections

- 70.112.010 Definitions.

- 70.112.020 Education in family medical practice—Department in school of medicine—Residency programs—Financial support.
- 70.112.030 Family practice education advisory board—Chairman—Membership.
- 70.112.040 Advisory board—Terms of members—Filling vacancies.
- 70.112.050 Advisory board—Duties—Annual report.
- 70.112.060 Funding of residency programs.

70.112.010 Definitions. (1) "School of medicine" means the University of Washington school of medicine located in Seattle, Washington;

(2) "Residency programs" mean community based family practice residency educational programs either in existence or established under this chapter;

(3) "Affiliated" means established or developed in cooperation with the school of medicine;

(4) "Family practice unit" means the community facility or classroom used for training of ambulatory health skills within a residency training program; and

(5) "Advisory board" means the family practice education advisory board created by this chapter. [1975 1st ex.s. c 108 § 1.]

70.112.020 Education in family medical practice—Department in school of medicine—Residency programs—Financial support. There is established a state-wide medical education system for the purpose of training resident physicians in family practice. The dean of the school of medicine shall be responsible for implementing the development and expansion of residency programs in cooperation with the medical profession, hospitals, and clinics located throughout the state. The chairman of the department of family medicine in the school of medicine, with the consent of the advisory board, shall determine where affiliated residency programs shall exist; giving consideration to communities in the state where the population, hospital facilities, number of physicians, and interest in medical education indicate the potential success of the residency program. The medical education system shall provide financial support for residents in training for those programs which are affiliated with the school of medicine and shall establish positions for appropriate faculty to staff these programs. The number of programs shall be determined by the board and be in keeping with the needs of the state. [1975 1st ex.s. c 108 § 2.]

70.112.030 Family practice education advisory board—Chairman—Membership. There is created a family practice education advisory board which shall consist of eight members with the dean of the school of medicine serving as chairman. Other members of the board will be:

- (1) Chairman, department of family medicine, school of medicine;
- (2) Two public members to be appointed by the governor;
- (3) A member appointed by the Washington state medical association;
- (4) A member appointed by the Washington state academy of family physicians;

(5) A hospital administrator representing those Washington hospitals with family practice residency programs, appointed by the governor; and

(6) A director representing the directors of community based family practice residency programs, appointed by the governor. [1975 1st ex.s. c 108 § 3.]

70.112.040 Advisory board—Terms of members—Filling vacancies. The dean and chairman of the department of family medicine at the University of Washington school of medicine shall be permanent members of the advisory board. Other members will be initially appointed as follows: Terms of the two public members shall be two years; the member from the medical association and the hospital administrator, three years; and the remaining two members, four years. Thereafter, terms for the nonpermanent members shall be four years; members may serve two consecutive terms; and new appointments shall be filled in the same manner as for original appointments. Vacancies shall be filled for an unexpired term in the manner of the original appointment. [1975 1st ex.s. c 108 § 4.]

70.112.050 Advisory board—Duties—Annual report. The advisory board shall advise the dean and the chairman of the department of family medicine in the implementation of the educational programs provided for in this chapter; including, but not limited to, the selection of the areas within the state where affiliate residency programs shall exist, the allocation of funds appropriated under this chapter, and the procedures for review and evaluation of the residency programs. On or before January 15 of each year the advisory board shall provide the governor and the legislature with the report on the status of the state-wide family practice residency program. [1975 1st ex.s. c 108 § 5.]

70.112.060 Funding of residency programs. (1) The moneys appropriated for these state-wide family medicine residency programs shall be in addition to all the income of the University of Washington and its school of medicine and shall not be used to supplant funds for other programs under the administration of the school of medicine.

(2) The allocation of state funds for the residency programs shall not exceed fifty percent of the total cost of the program.

(3) No more than twenty-five percent of the appropriation for each fiscal year for the affiliated programs shall be authorized for expenditures made in support of the faculty and staff of the school of medicine who are associated with the affiliated residency programs and are located at the school of medicine.

(4) No funds for the purposes of this chapter shall be used to subsidize the cost of care incurred by patients. [1975 1st ex.s. c 108 § 6.]

TITLE 71

MENTAL ILLNESS AND INEBRIACY

Chapters

- 71.02 Mental illness—Commitment procedure.**
- 71.05 Mental illness.**
- 71.06 Sexual psychopaths and psychopathic delinquents.**
- 71.12 Private establishments.**
- 71.16 Mental retardation facilities and community mental health centers.**
- 71.20 State and local services for mentally retarded and developmentally disabled.**
- 71.24 Community mental health services act.**
- 71.28 Mental health and retardation services—Interstate contracts.**
- 71.98 Construction.**

Children's center for research and training in mental retardation: RCW 28B.20.410–28B.20.414.

County hospitals: Chapter 36.62 RCW.

Division of mental health: Chapter 72.06 RCW.

Harrison Memorial Hospital: RCW 72.29.010.

Interstate compact on mental health: Chapter 72.27 RCW.

Jurisdiction over Indians concerning mental illness: Chapter 37.12 RCW.

Narcotics addicts: Chapter 69.32 RCW.

Nonresident insane, feeble-minded, epileptics, sexual psychopaths, and psychopathic delinquents: Chapter 72.25 RCW.

State hospitals for mentally ill: Chapter 72.23 RCW.

State institutions: Title 72 RCW.

- 71.02.412 Departmental assessment of charges—Determination of ability to pay—Standards—Rules and regulations.
- 71.02.413 Departmental assessment of charges—Notice of finding of responsibility—Period—Appeals—Judicial review.
- 71.02.414 Departmental assessment of charges—Judgment for accrued amounts.
- 71.02.415 Departmental assessment of charges—Modification or vacation of findings of responsibility.
- 71.02.416 Departmental assessment of charges—Reimbursement from property subsequently acquired.
- 71.02.417 Departmental assessment of charges—Responsibility under prior laws.
- 71.02.490 Authority over patient—Federal agencies, private establishments.
- 71.02.900 Construction and purpose—1959 c 25.

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

Criminally insane procedures, rights and responsibilities: Chapter 10.77 RCW.

Guardianship of estate or person: Chapters 11.88 and 11.92 RCW.

Mental illness: Chapter 71.05 RCW.

Nonresident insane, feeble-minded, and epileptics: Chapter 72.25 RCW.

Procedure as to insane convicts: RCW 72.08.110.

State hospitals for mentally ill: Chapter 72.23 RCW.

Transfer of juvenile from correctional institution to state hospital: RCW 72.01.390, 72.01.400.

Voluntary patients: RCW 72.23.070 through 72.23.120.

71.02.310 Hospitalization charges—Continuation of responsibility, existing cases. Patients' estates and relatives now responsible for the payment of maintenance charges upon the taking effect of this chapter shall remain so responsible hereunder. [1959 c 25 § 71.02.310. Prior: 1951 c 139 § 53.]

71.02.320 Hospitalization charges—Due date—Collection. Hospitalization charges are payable on the tenth day of each calendar month, for services rendered during the preceding month, and the department may make all necessary rules and regulations relative to the billing and collection of such charges. [1967 ex.s. c 127 § 2; 1959 c 25 § 71.02.320. Prior: 1951 c 139 § 56.]

71.02.330 Hospitalization charges—Modification of order requiring payment. The superior court may, upon petition, modify any existing order entered pursuant to RCW 71.02.230, where it is shown that the petitioner is unable to continue payment of hospitalization charges. A hearing may be had on such petition in the nature of proceedings supplemental to execution in civil actions. Such petition must be served on the department at least ten days prior to hearings. [1959 c 25 § 71.02.330. Prior: 1951 c 139 § 58.]

Chapter 71.02

MENTAL ILLNESS—COMMITMENT PROCEDURE

(SUCCESSOR LAW: SEE CHAPTER 71.05 RCW)

Sections

- 71.02.310 Hospitalization charges—Continuation of responsibility, existing cases.
- 71.02.320 Hospitalization charges—Due date—Collection.
- 71.02.330 Hospitalization charges—Modification of order requiring payment.
- 71.02.340 Hospitalization charges—Modification of order to require payment by relative.
- 71.02.350 Hospitalization charges—Transportation charges—Collection.
- 71.02.360 Hospitalization charges—Collection—Statutes of limitation.
- 71.02.370 Hospitalization charges—Collection—Prosecuting attorneys to assist.
- 71.02.380 Hospitalization charges—Criminally insane—Liability.
- 71.02.390 Hospitalization charges—Advance remittances.
- 71.02.400 Hospitalization charges—Cancellation.
- 71.02.410 Hospitalization charges—Including charges for outpatient services, transportation costs—How computed.
- 71.02.411 Departmental assessment of charges—Responsibility for cost of hospitalization and outpatient services.

Proceedings supplemental to execution: Chapter 6.32 RCW.

71.02.340 Hospitalization charges—Modification of order to require payment by relative. The department may apply for modification of any existing order where it is shown that there exists some relative within the classification set forth in RCW 71.02.230 who is able to pay hospitalization charges. Such relative must be served with notice of such petition in the same manner as summons is served in civil action. [1959 c 25 § 71.02.340. Prior: 1951 c 139 § 59.]

Service of summons: RCW 4.28.080.

71.02.350 Hospitalization charges—Transportation charges—Collection. The department shall have the right to collect hospitalization and transportation charges from a patient's estate or person legally responsible for the support of a patient without the entry of any order to such effect under RCW 71.02.230. If the person administering the patient's estate or the person responsible for the support of the patient is unable to pay such charges he shall petition the court for an order declaring such inability pursuant to RCW 71.02.330. [1959 c 25 § 71.02.350. Prior: 1951 c 139 § 60.]

71.02.360 Hospitalization charges—Collection—Statutes of limitation. No statutes of limitations shall run against the state of Washington for hospitalization charges: *Provided, however,* That periods of limitations for the filing of creditors' claims against probate and guardianship estates shall apply against such claims. [1959 c 25 § 71.02.360. Prior: 1951 c 139 § 61.]

Period of limitation for claims against guardianship estate: RCW 11.92.035.

Period of limitation for claims against probate estate: RCW 11.40.010.

71.02.370 Hospitalization charges—Collection—Prosecuting attorneys to assist. The prosecuting attorneys of the various counties shall assist the department in the collection of hospitalization charges. [1959 c 25 § 71.02.370. Prior: 1951 c 139 § 64.]

71.02.380 Hospitalization charges—Criminally insane—Liability. Patients hospitalized at state hospitals as criminally insane shall be responsible for payment of hospitalization charges unless an order is obtained pursuant to RCW 71.02.330. [1959 c 25 § 71.02.380. Prior: 1951 c 139 § 62.]

Criminally insane, reimbursement for costs: RCW 10.77.250.

71.02.390 Hospitalization charges—Advance remittances. Advance remittances of such hospitalization charges may be held by the department in a suspense account for a period not to exceed ninety days in order to make prompt refunds in cases of overpayment. Monies in such account shall be deposited in such bank or banks as the department may select, and any such depository shall furnish suitable surety bond or collateral for their safekeeping. Such funds shall be transmitted to the state treasurer for deposit in the general fund after

being held for the above purpose. [1959 c 25 § 71.02-390. Prior: 1951 c 139 § 57.]

71.02.400 Hospitalization charges—Cancellation. The department shall have authority to cancel accrued hospitalization charges to the extent of one hundred dollars or less, when a patient has deceased or has been discharged. [1959 c 25 § 71.02.400. Prior: 1951 c 139 § 63.]

71.02.410 Hospitalization charges—Including charges for outpatient services, transportation costs—How computed. Charges for hospitalization of patients in state hospitals are to be based on the actual cost of operating such hospitals for the previous year, taking into consideration the overhead expense of operating the hospital and expense of maintenance and repair, including in both cases all salaries of supervision and management as well as material and equipment actually used or expended in operation as computed by the department: *Provided,* That a schedule of differing hospitalization charges may be computed, including a schedule of charges for outpatient services, considering the costs of care, treatment and maintenance in accordance with the classification of mental illness, type and intensity of treatment rendered, which may vary among and within the several state hospitals. Costs of transportation shall be computed by the department. [1967 ex.s. c 127 § 1; 1959 c 25 § 71.02.410. Prior: 1951 c 139 § 52.]

71.02.411 Departmental assessment of charges—Responsibility for cost of hospitalization and outpatient services. Any person admitted or committed to a state hospital for the mentally ill under the provisions of Title 71 RCW or RCW 72.23.070, or chapter 10.76 RCW, and their estates and responsible relatives are liable for reimbursement to the state of the costs of hospitalization and/or outpatient services, as computed by the secretary of the department of social and health services, or his designee, in accordance with RCW 71.02.410: *Provided,* That such mentally ill person, and his or her estate, and the husband or wife of such mentally ill person and their estate shall be primarily responsible for reimbursement to the state for the costs of hospitalization and/or outpatient services; and, the parents of such mentally ill person and their estates, until such person has attained the age of eighteen years, shall be secondarily liable. [1971 ex.s. c 292 § 64; 1967 ex.s. c 127 § 4.]

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

71.02.412 Departmental assessment of charges—Determination of ability to pay—Standards—Rules and regulations. The department of institutions is authorized to investigate the financial condition of each person liable under the provisions of *RCW 71.02.230, 71.02.320, and 71.02.410 through 71.02.417, and is further authorized to make determinations of the ability of each such person to pay hospitalization charges and/or charges for outpatient services, in accordance with the provisions of *RCW 71.02.230, 71.02.320, and 71.02-410 through 71.02.417, and, for such purposes, to set a

standard as a basis of judgment of ability to pay, which standard shall be recomputed periodically to reflect changes in the costs of living, and other pertinent factors, and to make provisions for unusual and exceptional circumstances in the application of such standard.

In accordance with the provisions of the Administrative Procedure Act, chapter 34.04 RCW, the department shall adopt appropriate rules and regulations relating to the standards to be applied in determining ability to pay such charges, the schedule of charges pursuant to RCW 71.02.410, and such other rules and regulations as are deemed necessary to administer the provisions of *RCW 71.02.230, 71.02.320, and 71.02.410 through 71.02.417. [1967 ex.s. c 127 § 5.]

*Reviser's note: The references to "RCW 71.02.230, 71.02.320, and 71.02.410 through 71.02.417" appearing in this section and in RCW 71.02.413, 71.02.416 and 71.02.100 constitute a literal translation of the session law phrases "this 1967 amendatory act" or "this act".

"RCW 71.02.230" was repealed by section 66, chapter 142, Laws of 1973 1st ex. sess.

71.02.413 Departmental assessment of charges—
Notice of finding of responsibility—Period—
Appeals—Judicial review. In any case where determination is made that a person, or the estate of such person, is able to pay all, or any portion of the monthly charges for hospitalization, and/or charges for outpatient services, a notice of finding of responsibility shall be served on such person or persons and the legal representative of such person. The notice shall set forth the amount the department has determined that such person, or his or her estate, is able to pay per month not to exceed the monthly costs of hospitalization, and/or costs of outpatient services, as fixed in accordance with the provisions of RCW 71.02.410, or as otherwise limited by the provisions of *RCW 71.02.230, 71.02.320, and 71.02.410 through 71.02.417. The responsibility for the payment to the department of social and health services shall commence thirty days after service of such notice and finding of responsibility which finding of responsibility shall cover the period from the date of admission of such mentally ill person to a state hospital, and for the costs of hospitalization, and/or the costs of outpatient services, accruing thereafter. The notice and finding of responsibility shall be served upon all persons found financially responsible either personally, or, by registered or certified mail, enclosing a form for acknowledgment of service with return postage prepaid. If service is by mailing and a form of acknowledgment of service is not executed and returned to the department, then personal service must be made for the finding of responsibility to be effective. An appeal may be made to the secretary of social and health services, or his designee within thirty days from the date of posting of such notice and finding of responsibility, upon the giving of written notice of appeal to the secretary of social and health services by registered or certified mail, or by personal service. If no appeal is taken, the notice and finding of responsibility shall become final. If an appeal is taken, the execution of notice and finding of responsibility shall be stayed pending the decision of such appeal. Appeals may be heard in any county seat most convenient to the appellant. The hearing of appeal may be

presided over by a hearing examiner appointed by the secretary, and the proceedings shall be recorded either manually or by a mechanical device. At the conclusion of such hearing, the hearing examiner shall make findings of fact and his conclusions and recommended determination of responsibility. Thereafter, the secretary, or his designee, may either affirm, reject or modify the findings, conclusions and determination of responsibility made by the hearing examiner. Judicial review of the secretary's determination of responsibility in the superior court, the court of appeals, and the supreme court may be taken in accordance with the provisions of the Administrative Procedure Act, chapter 34.04 RCW. [1971 c 81 § 133; 1969 ex.s. c 268 § 1; 1967 ex.s. c 127 § 6.]

*Reviser's note: "RCW 71.02.230, 71.02.320, and 71.02.410 through 71.02.417", see note following RCW 71.02.412.

71.02.414 Departmental assessment of charges—
Judgment for accrued amounts. Whenever any notice and finding of responsibility, or appeal therefrom, shall have become final, the superior court, wherein such person or persons reside or have property either real or personal, shall, upon application of the director of institutions enter a judgment in the amount of the accrued monthly charges for the costs of hospitalization, and/or the costs of outpatient services, and such judgment shall have and be given the same effect as if entered pursuant to civil action instituted in said court. [1967 ex.s. c 127 § 7.]

71.02.415 Departmental assessment of charges—
Modification or vacation of findings of responsibility. The director, or his designee, upon application of the person responsible for payment of reimbursement to the state of the costs of hospitalization, and/or the costs of outpatient services, or the legal representative of such person, and, after investigation, or after investigation without application, the director, or his designee, if satisfied of the financial ability or inability of such person to reimburse the state in accordance with the original finding of responsibility, may, modify or vacate such original finding of responsibility and enter a new finding of responsibility. The determination to modify or vacate findings of responsibility shall be served and be appealable in the same manner and in accordance with the same procedures for appeals of original findings of responsibility. [1967 ex.s. c 127 § 8.]

71.02.416 Departmental assessment of charges—
Reimbursement from property subsequently acquired. The provisions of *RCW 71.02.230, 71.02.320, and 71.02.410 through 71.02.417 shall not be construed as prohibiting or preventing the department of institutions from obtaining reimbursement from any person liable under *RCW 71.02.230, 71.02.320, and 71.02.410 through 71.02.417 for the reimbursement of the state of the full amount of the accrued charges for the costs of hospitalization, and/or the costs of outpatient services, to the extent of the liability as provided by this chapter, from any property acquired subsequent to and regardless of the initial findings of responsibility. [1967 ex.s. c 127 § 9.]

*Reviser's note: *RCW 71.02.230, 71.02.320, and 71.02.410 through 71.02.417", see note following RCW 71.02.412.

71.02.417 Departmental assessment of charges—Responsibility under prior laws. All persons admitted or committed to a state hospital under the provisions of Title 71 RCW or RCW 72.23.070, or chapter 10.76 RCW and their responsible relatives and their estates, whose ability to pay hospitalization charges has been determined under prior laws shall not be affected by the provisions of *RCW 71.02.230, 71.02.320, and 71.02.410 through 71.02.417 until a finding of responsibility shall have been made and become final in accordance with the provisions of *RCW 71.02.230, 71.02.320, and 71.02.410 through 71.02.417. [1967 ex.s. c 127 § 10.]

*Reviser's note: *RCW 71.02.230, 71.02.320, and 71.02.410 through 71.02.417", see note following RCW 71.02.412.

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

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

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

Chapter 71.05 MENTAL ILLNESS

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Commitment of mentally ill, voluntary, review of condition and status: RCW 72.23.070.

Minors, commitment procedure, requirements, rights, etc.: RCW 72.23.070.

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

(1) To end inappropriate, indefinite commitment of mentally disordered persons and to eliminate legal disabilities that arise from such commitment;

(2) To provide prompt evaluation and short term treatment of persons with serious mental disorders;

(3) To safeguard individual rights;

(4) To provide continuity of care for persons with serious mental disorders;

(5) To encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures;

(6) To encourage, whenever appropriate, that services be provided within the community. [1973 1st ex.s. c 142 § 6.]

71.05.020 Definitions. For the purposes of this chapter:

(1) "Gravely disabled" means a condition in which a person, as a result of a mental disorder is in danger of serious physical harm resulting from a failure to provide for his essential human needs;

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

(3) "Likelihood of serious harm" means either (a) a substantial risk that physical harm will be inflicted by an individual upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's self, or (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm;

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

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

(6) "Public agency" means any evaluation and treatment facility of, or operated directly by, federal, state, county, or municipal government, or a combination of such governments;

(7) "Private agency" means any person, partnership, corporation, or association not defined as a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility;

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

(9) "Department" means the department of social and health services of the state of Washington;

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

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

(12) "Professional person" shall mean a mental health professional, as above defined, and shall also mean a physician, registered nurse, and such others as may be

defined by rules and regulations adopted by the secretary pursuant to the provisions of this chapter;

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

(14) "Psychologist" means a person with an earned graduate degree in psychology or a graduate degree deemed its equivalent under rules and regulations adopted by the secretary or who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

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

(16) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and short term inpatient care to persons suffering from a mental disorder, and which is certified as such by the department of social and health services: *Provided*, That a physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility: *Provided further*, That a facility which is part of, or operated by, the department of social and health services or any federal agency will not require certification: *And provided further*, That no correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter. [1973 1st ex.s. c 142 § 7.]

71.05.030 Commitment laws applicable. Persons suffering from a mental disorder may not be involuntarily committed for treatment of such disorder except pursuant to provisions of this chapter, chapter 10.76 RCW or its successor, chapter 71.06 RCW, transfer pursuant to RCW 72.68.031 through 72.68.037, or pursuant to court ordered evaluation and treatment not to exceed ninety days pending a criminal trial or sentencing. [1974 ex.s. c 145 § 4; 1973 2nd ex.s. c 24 § 2; 1973 1st ex.s. c 142 § 8.]

71.05.040 No detention or judicial commitment—Epileptic—Mentally deficient or retarded—Senile—Chronic alcoholic or drug abuse impaired. Persons who are epileptics, mentally deficient, mentally retarded, impaired by chronic alcoholism or drug abuse, or senile shall not be detained for evaluation and treatment or judicially committed solely by reason of that condition unless such condition causes a person to be gravely disabled or as a result of a mental disorder such condition exists that constitutes a likelihood of serious harm to self or others: *Provided*, That a person shall not be subject to the provisions of this chapter if proceedings have been initiated under the provisions of the Washington Uniform Alcoholism and Intoxication Treatment Act, chapter 70.96A RCW. [1975 1st ex.s. c 199 § 1; 1974 ex.s. c 145 § 5; 1973 1st ex.s. c 142 § 9.]

71.05.050 Voluntary application for mental health services—Rights—Review of condition and status—Detention. Nothing in this chapter shall be construed to limit the right of any person to apply voluntarily to any public or private agency or practitioner for treatment of a mental disorder, either by direct application or by referral. Any person voluntarily admitted for inpatient treatment to any public or private agency shall be released immediately upon his request. Any person voluntarily admitted for inpatient treatment to any public or private agency shall orally be advised of the right to immediate release and further advised of such rights in writing as are secured to them pursuant to this chapter and their rights of access to attorneys, courts, and other legal redress. Their condition and status shall be reviewed at least once each one hundred eighty days for evaluation as to the need for further treatment and/or possible release, at which time they shall again be advised of their right to release upon request: *Provided however*, That if the professional staff of any public or private agency regards a person voluntarily admitted who requests release as presenting, as a result of a mental disorder, an imminent likelihood of serious harm to himself or others, or is gravely disabled, they may detain such person for sufficient time to notify the designated county mental health professional of such person's condition to enable such mental health professional to authorize such person being further held in custody or transported to an evaluation and treatment center pursuant to the provisions of this chapter, which shall in ordinary circumstances be no later than the next judicial day. [1975 1st ex.s. c 199 § 2; 1974 ex.s. c 145 § 6; 1973 1st ex.s. c 142 § 10.]

71.05.060 Rights of persons complained against. A person subject to confinement resulting from any petition or proceeding pursuant to the provisions of this chapter shall not forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided in this chapter. [1973 1st ex.s. c 142 § 11.]

71.05.070 Prayer treatment. The provisions of this chapter shall not be construed to deny to any person treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination. [1973 1st ex.s. c 142 § 12.]

71.05.080 Effect on pending proceedings and on persons previously committed. Except as herein provided, the provisions of this chapter shall not in themselves impair any action taken in any proceeding pending under statutes in effect prior to January 1, 1974, nor shall they apply retroactively to terminate the detention of any person previously committed pursuant to statutes in effect prior to January 1, 1974. One hundred twenty days after January 1, 1974, the provisions of RCW 71.05.320(2) shall apply to all persons previously committed pursuant to chapter 71.02 RCW. [1973 1st ex.s. c 142 § 13.]

71.05.090 Choice of physicians. Persons receiving evaluation or treatment under this chapter shall be given a reasonable choice of an available physician or other professional person qualified to provide such services. [1973 2nd ex.s. c 24 § 3; 1973 1st ex.s. c 142 § 14.]

71.05.100 Financial responsibility. In addition to the responsibility provided for by RCW 71.02.411, any person, or his estate, or his spouse, or the parents of a minor person who is involuntarily detained pursuant to this chapter for the purpose of treatment and evaluation outside of a facility maintained and operated by the department of social and health services shall be responsible for the cost of such care and treatment. In the event that an individual is unable to pay for such treatment or in the event payment would result in a substantial hardship upon the individual or his family, then the county of residence of such person shall be responsible for such costs. If it is not possible to determine the county of residence of the person, the cost shall be borne by the county where the person was originally detained. The department of social and health services shall, pursuant to chapter 34.04 RCW, adopt standards as to (1) inability to pay in whole or in part, (2) a definition of substantial hardship, and (3) appropriate payment schedules. Such standards shall be applicable to all county mental health administrative boards. Financial responsibility with respect to department services and facilities shall continue to be as provided in chapter 71.02 RCW. [1973 2nd ex.s. c 24 § 4; 1973 1st ex.s. c 142 § 15.]

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

71.05.120 Exemptions from liability. No officer of a public or private agency, nor the superintendent, professional person in charge, his professional designee, or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person pursuant to this chapter shall be civilly or criminally liable for detaining or releasing a person pursuant to *this 1974 amendatory act at or before the end of the period for which he was admitted or committed for evaluation or treatment: *Provided*, That such duties were performed in good faith and without gross negligence. [1974 ex.s. c 145 § 7; 1973 2nd ex.s. c 24 § 5; 1973 1st ex.s. c 142 § 17.]

*Reviser's note: "this 1974 amendatory act" [1974 ex.s. c 145], see note following RCW 71.05.050.

71.05.130 Duty of prosecuting attorney. In any judicial proceeding for involuntary commitment or detention, or in any proceeding challenging such commitment or detention, the prosecuting attorney for the county in which the proceeding was initiated shall represent the individuals or agencies petitioning for commitment or detention and shall defend all challenges to such commitment or detention. [1973 1st ex.s. c 142 § 18.]

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

71.05.150 Detention of mentally disordered persons for evaluation and treatment—Procedure. (1) (a) When a mental health professional designated by the county receives information alleging that a person, as a result of a mental disorder, presents a likelihood of serious harm to others or himself, or is gravely disabled, such mental health professional, after investigation and evaluation of the specific facts alleged, and of the reliability and credibility of the person or persons, if any, providing information to initiate detention, may summon such person to appear at an evaluation and treatment facility for not more than a seventy-two hour evaluation and treatment period; the summons shall state whether the required seventy-two hour evaluation and treatment services may be delivered on an outpatient or inpatient status. The mental health professional shall also designate, at the time of the summons, from a list provided by the court, an attorney who will be appointed, if any is to be appointed, and state the name, business address, and telephone number of this attorney in the summons.

(b) The summons shall state a date and time to appear not less than twenty-four hours after the service of the summons. The summons shall state the address of the evaluation and treatment facility to which such person is to report and the business address and phone number of the mental health professional designated by the county. The summons shall state that if the person named in the summons fails to appear at the evaluation and treatment facility at or before the date and time stated in the summons, such person may be involuntarily taken into custody. Accompanying the summons to such person shall be a copy of the petition for initial detention and a notice of rights.

(c) If such mental health professional decides to summon such person for up to a seventy-two hour evaluation and treatment period, the mental health professional must file in court the summons, the petition for initial detention, and all documentary evidence. The mental health professional shall then serve or cause to be served on such person, his guardian, and conservator, if any, a copy of the summons together with a notice of rights and a petition for initial detention. After service on such person the mental health professional shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility and the designated attorney. The mental health professional shall notify the court and the prosecuting attorney that a

probable cause hearing will be held within seventy-two hours of the date and time specified on the summons if such person is not released prior to the expiration of such period.

(d) If the person summoned appears on or before the date and time specified, the evaluation and treatment facility may admit such person as required by RCW 71.05.170 or may provide treatment on an outpatient basis. If the person summoned fails to appear on or before the date and time specified, the evaluation and treatment facility shall immediately notify the mental health professional designated by the county who may notify a peace officer to take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility. Should the mental health professional notify a peace officer authorizing him to take a person into custody under the provisions of this subsection, he shall file with the court a copy of such authorization and a notice of detention. At the time such person is taken into custody there shall commence to be served on such person, his guardian, and conservator, if any, a copy of the original summons together with a notice of detention, a notice of rights, and a petition for initial detention.

(2) When a mental health professional designated by the county receives information alleging that a person, as the result of a mental disorder, presents an imminent likelihood of serious harm to himself or others, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the mental health professional may take such person, or cause by oral or written order such person to be taken into emergency custody in an evaluation and treatment facility for not more than seventy-two hours as described in RCW 71.05.180.

(3) A peace officer may take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility pursuant to subsection (1)(d) of this section.

(4) A peace officer may, without prior notice of the proceedings provided for in subsection (1) of this section, take or cause such person to be taken into custody and immediately delivered to an evaluation and treatment facility:

(a) Only pursuant to subsections (1)(d) and (2) of this section; or

(b) When he has reasonable cause to believe that such person is suffering from a mental disorder and presents an imminent likelihood of serious harm to others or himself.

(5) Persons delivered to evaluation and treatment facilities by peace officers pursuant to subsection (4)(b) of this section may be held by the facility for a period of up to twelve hours: *Provided*, That they are examined by a mental health professional within three hours of their arrival. Within twelve hours of their arrival, the designated county mental health professional must file a supplemental petition for detention, and commence service on the designated attorney for the detained person. [1975 1st ex.s. c 199 § 3; 1974 ex.s. c 145 § 8; 1973 1st ex.s. c 142 § 20.]

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

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

71.05.170 Acceptance of petition—Notice. Whenever the designated county mental health professional petitions for detention of a person whose actions constitute a likelihood of serious harm to himself or others, or who is gravely disabled, the facility providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. The facility shall then evaluate the person's condition and admit or release such person in accordance with RCW 71.05.210. The facility shall notify in writing the court and the designated county mental health professional of the date and time of the initial detention of each person involuntarily detained in order that a probable cause hearing shall be held no later than seventy-two hours after detention. [1974 ex.s. c 145 § 10; 1973 1st ex.s. c 142 § 22.]

71.05.180 Detention period for evaluation and treatment. If the evaluation and treatment facility admits the person, it may detain him for evaluation and treatment for a period not to exceed seventy-two hours. The computation of such seventy-two hour period shall include Saturdays, but exclude Sundays and holidays. [1974 ex.s. c 145 § 11; 1973 1st ex.s. c 142 § 23.]

71.05.190 Persons not admitted—Transportation. If the person is not approved for admission by a facility providing seventy-two hour evaluation and treatment, and the individual has not been arrested, the facility shall furnish transportation, if not otherwise available, for the person to his place of residence or other appropriate place. [1974 ex.s. c 145 § 12; 1973 1st ex.s. c 142 § 24.]

71.05.200 Notice and statement of rights—Probable cause hearing. (1) Whenever any person is detained for evaluation and treatment pursuant to this chapter, both he and, if possible, a responsible member of his immediate family, guardian, or conservator, if any, shall

be advised as soon as possible in writing or orally, by the officer or person taking him into custody or by personnel of the evaluation and treatment facility where he is detained that unless he is released or voluntarily admits himself for treatment within seventy-two hours of the initial detention:

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

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

(c) That he has the right to remain silent and that any statement he makes may be used against him;

(d) That he has the right to present evidence and to cross-examine witnesses who testify against him at the probable cause hearing; and

(e) That he has the right to refuse medication beginning twenty-four hours prior to the probable cause hearing.

(2) When proceedings are initiated under RCW 71.05.150 (2), (3), or (4)(b), no later than twelve hours after such person is admitted to the evaluation and treatment facility the personnel of the evaluation and treatment facility or the designated mental health professional shall serve on such person a copy of the petition for initial detention and the name, business address, and phone number of the designated attorney and shall forthwith commence service of a copy of the petition for initial detention on said designated attorney.

(3) The judicial hearing described in subsection (1) of this section is hereby authorized, and shall be held according to the provisions of subsection (1) of this section and rules promulgated by the supreme court. [1974 ex.s. c 145 § 13; 1973 1st ex.s. c 142 § 25.]

71.05.210 Evaluation—Treatment and care—Release or other disposition. Each person involuntarily admitted to an evaluation and treatment facility shall, within twenty-four hours of his admission, be examined and evaluated by a licensed physician and a mental health professional as defined in this chapter, and shall receive such treatment and care as his condition requires including treatment on an outpatient basis for the period that he is detained, except that, beginning twenty-four hours prior to a court proceeding, the individual may refuse all but emergency life-saving treatment, and the individual shall be informed at an appropriate time of his right to such refusal of treatment. Such person shall be detained up to seventy-two hours, if, in the opinion of the professional person in charge of the facility, or his

professional designee, the person presents a likelihood of serious harm to himself or others, or is gravely disabled. A person who has been detained for seventy-two hours shall no later than the end of such period be released, unless referred for further care on a voluntary basis, or detained pursuant to court order for further treatment as provided in this chapter.

An evaluation and treatment center admitting any person pursuant to this chapter whose physical condition reveals the need for hospitalization shall assure that such person is transferred to an appropriate hospital for treatment. Notice of such fact shall be given to the court, the designated attorney, and the designated county mental health professional and the court shall order such continuance in proceedings under this chapter as may be necessary, but in no event may this continuance be more than fourteen days. [1975 1st ex.s. c 199 § 4; 1974 ex.s. c 145 § 14; 1973 1st ex.s. c 142 § 26.]

71.05.220 Property of committed person. At the time a person is involuntarily admitted to an evaluation and treatment facility, the professional person in charge or his designee shall take reasonable precautions to inventory and safeguard the personal property of the person detained. A copy of the inventory, signed by the staff member making it, shall be given to the person detained and shall, in addition, be open to inspection to any responsible relative, subject to limitations, if any, specifically imposed by the detained person. For purposes of this section, "responsible relative" includes the guardian, conservator, attorney, spouse, parent, adult child, or adult brother or sister of the person. The facility shall not disclose the contents of the inventory to any other person without the consent of the patient or order of the court. [1973 1st ex.s. c 142 § 27.]

71.05.230 Procedures for additional treatment. A person detained for seventy-two hour evaluation and treatment may be detained for not more than fourteen additional days of either involuntary intensive treatment or of a less restrictive alternative to involuntary intensive treatment if the following conditions are met:

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

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

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

(4) The professional staff of the agency or facility or the mental health professional designated by the county has filed a petition for fourteen day involuntary detention or a less restrictive alternative with the court. The petition must be signed either by two physicians or by one physician and a mental health professional who have

examined the person. If involuntary detention is sought the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm to others or himself, or is gravely disabled and that there are no less restrictive alternatives to detention in the best interest of such person or others. If an involuntary less restrictive alternative is sought, the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm to others or himself, or is gravely disabled and shall set forth the less restrictive alternative proposed by the facility; and

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

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

(7) The court has ordered a fourteen day involuntary treatment after a probable cause hearing has been held pursuant to RCW 71.05.240. [1975 1st ex.s. c 199 § 5; 1974 ex.s. c 145 § 15; 1973 1st ex.s. c 142 § 28.]

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

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

The court shall specifically state to such person and give such person notice in writing that if involuntary treatment beyond the fourteen day period is to be sought, such person will have the right to a full hearing or jury trial as required by RCW 71.05.310 [1974 ex.s. c 145 § 16; 1973 1st ex.s. c 142 § 29.]

71.05.250 Probable cause hearing—Detained person's rights—Waiver of physician-patient privilege—Records as evidence. At the probable cause

hearing the detained person shall have the following rights in addition to the rights previously specified:

- (1) To present evidence on his behalf;
- (2) To cross-examine witnesses who testify against him;
- (3) To be proceeded against by the rules of evidence;
- (4) To remain silent;
- (5) To view and copy all petitions and reports in the court file.

The physician-patient privilege shall be deemed waived in proceedings under this chapter when a court of competent jurisdiction in its discretion determines that it is unreasonable for the petitioner seeking fourteen-day involuntary treatment to obtain a sufficient evaluation of the detained person by a psychiatrist or psychologist or other health professional and such waiver is necessary in the opinion of the court to protect either the detained person or the public.

Whenever the physician-patient privilege is deemed waived pursuant to this section, the waiver shall be limited to the introduction of relevant and competent medical records or testimony of an evaluation or treatment facility or its staff, a facility of the department of social and health services or its staff, or a facility certified for ninety-day treatment by the department of social and health services or its staff for the purpose of meeting evaluation requirements contained in chapter 10.77 RCW and chapter 71.12 RCW: *Provided however*, That the physician-patient privilege shall not be waived if the physician specifically identifies himself to the detained person as one who is communicating with that person for treatment only: *And provided further*, That the privilege shall not extend to incident reports involving the detained person.

The record maker shall not be required to testify in order to introduce medical records of the detained person so long as the requirements of RCW 5.45.020 are met except that portions of the record which contains opinions as to the detained person's mental state must be deleted from such records unless the person making such conclusions is available for cross-examination. [1974 ex.s. c 145 § 17; 1973 1st ex.s. c 142 § 30.]

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

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

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

71.05.280 Additional confinement—Grounds—Duration. At the expiration of the fourteen day period of intensive treatment, a person may be confined for further treatment pursuant to RCW 71.05.320 for an additional period, not to exceed ninety days if:

(1) Such person has threatened, attempted, or inflicted physical harm upon the person of another or himself after having been taken into custody for evaluation and treatment, and, as a result of mental disorder presents a likelihood of serious harm to others or himself; or

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

(3) Such person is in custody because he has committed acts constituting a felony, and as a result of a mental disorder, presents a substantial likelihood of repeating similar acts. In any proceeding pursuant to this subsection it shall not be necessary to show intent, wilfulness, or state of mind as an element of the felony; or

(4) Such person is gravely disabled.

For the purposes of this chapter "custody" shall mean involuntary detention under the provisions of this chapter or chapter 10.76 RCW, uninterrupted by any period of unconditional release from a facility providing involuntary care and treatment. [1974 ex.s. c 145 § 19; 1973 1st ex.s. c 142 § 33.]

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

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

(3) If a person has been determined to be incompetent pursuant to RCW 10.77.090(3) as now existing or hereafter amended, then the professional person in charge of the treatment facility or his professional designee or the

county designated mental health professional may directly file a petition for ninety day treatment under RCW 71.05.280(3). No petition for initial detention or fourteen day detention is required before such a petition may be filed. [1975 1st ex.s. c 199 § 6; 1974 ex.s. c 145 § 20; 1973 1st ex.s. c 142 § 34.]

71.05.300 Filing of petition—Appearance—Notice—Advice as to rights—Appointment of attorney, professional person. The petition for ninety day treatment shall be filed with the clerk of the superior court. At the time of filing such petition, the clerk shall set a time for the person to come before the court on the next judicial day after the day of filing unless such appearance is waived by the person's attorney, and the clerk shall notify the designated county mental health professional. The designated county mental health professional shall immediately notify the person detained, his attorney, if any, and his guardian or conservator, if any, and the prosecuting attorney, and provide a copy of the petition to such persons as soon as possible.

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

The court may, if requested, also appoint a professional person as defined in RCW 71.05.020(12) to seek less restrictive alternative courses of treatment and to testify on behalf of the detained person.

The court shall also set a date for a full hearing on the petition as provided in RCW 71.05.310. [1975 1st ex.s. c 199 § 7; 1974 ex.s. c 145 § 21; 1973 1st ex.s. c 142 § 35.]

71.05.310 Time for hearing—Due process—Jury trial—Continuation of treatment. The court shall conduct a hearing on the petition for ninety day treatment within five judicial days of the first court appearance after the probable cause hearing unless the person named in the petition requests a jury trial, in which case trial shall commence within ten judicial days of the filing of the petition for ninety day treatment. The court may continue the hearing upon the written request of the person named in the petition or his attorney, which continuance shall not exceed ten additional judicial days. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The person shall be present at such proceeding, which shall in all respects accord with the constitutional guarantees of due process of law and the rules of evidence pursuant to RCW 71.05.250.

During the proceeding, the person named in the petition shall continue to be treated until released by order of the superior court. If no order has been made within

thirty days after the filing of the petition, not including extensions of time requested by the detained person or his attorney, the detained person shall be released. [1975 1st ex.s. c 199 § 8; 1974 ex.s. c 145 § 22; 1973 1st ex.s. c 142 § 36.]

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

If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department of social and health services or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment.

(2) Said person shall be released from involuntary treatment at the expiration of ninety days unless the superintendent or professional person in charge of the facility in which he is confined, or in the event of a less restrictive alternative, the designated mental health professional, files a new petition for involuntary treatment on the grounds that the committed person;

(a) Has threatened, attempted, or inflicted physical harm upon the person of another during the current period of court ordered treatment and, as a result of mental disorder presents a likelihood of serious harm to others; or

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

(c) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder presents a substantial likelihood of repeating similar acts; or

(d) Continues to be gravely disabled.

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

The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this subsection are present, the court may order the committed person

returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment. At the end of the one hundred eighty day period of commitment, the committed person shall be released unless a petition for another one hundred eighty day period of continued treatment is filed and heard in the same manner as provided herein above. Successive one hundred eighty day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty day commitment. No person committed as herein provided may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length. [1975 1st ex.s. c 199 § 9; 1974 ex.s. c 145 § 23; 1973 1st ex.s. c 142 § 37.]

71.05.330 Early release—Notice to court. Nothing in this chapter shall prohibit the superintendent or professional person in charge of the hospital or facility in which the person is being involuntarily treated from releasing him prior to the expiration of the commitment period when, in the opinion of the superintendent or professional person in charge, the person being involuntarily treated no longer presents a likelihood of serious harm to others.

Whenever the superintendent or professional person in charge of a hospital or facility providing involuntary treatment pursuant to this chapter releases a person prior to the expiration of ninety days, the superintendent or professional person in charge shall in writing notify the court which committed the person for treatment. [1973 1st ex.s. c 142 § 38.]

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

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

(3) If the hospital or facility designated to provide outpatient care, the designated county mental health professional or the secretary determines that a conditionally released person is failing to adhere to the terms and conditions of his release, and because of that failure

has become a substantial danger to himself or other persons, then, upon notification by the hospital or facility designated to provide outpatient care, or on his own motion, the designated county mental health professional or the secretary may order that the conditionally released person be apprehended and taken into custody and temporarily detained in an evaluation and treatment facility in or near the county in which he is receiving outpatient treatment until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he had been conditionally released. The designated county mental health professional or the secretary may modify or rescind such order at any time prior to commencement of the court hearing. The court that originally ordered commitment shall be notified within two judicial days of a person's detention under the provisions of this section, and the designated county mental health professional or the secretary shall file his petition and order of apprehension and detention with the court and serve them upon the person detained. His attorney, if any, and his guardian or conservator, if any, shall receive a copy of such papers as soon as possible. Such person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as specifically set forth in this section and except that there shall be no right to jury trial. The issues to be determined shall be whether the conditionally released person did or did not adhere to the terms and conditions of his release; and, if he failed to adhere to such terms and conditions, whether the conditions of release should be modified or the person should be returned to the facility. Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he was committed for involuntary treatment, or otherwise in accordance with the provisions of this chapter. Such hearing may be waived by the person and his counsel and his guardian or conservator, if any, but shall not be waivable unless all such persons agree to waive, and upon such waiver the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions.

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

Upon expiration of the period of commitment, or when the person is released from outpatient care, notice in writing to the court which committed the person for treatment shall be provided. [1974 ex.s. c 145 § 24; 1973 1st ex.s. c 142 § 39.]

71.05.350 Assistance to released persons. No indigent patient shall be conditionally released or discharged

from involuntary treatment without suitable clothing, and the superintendent of a state hospital shall furnish the same, together with such sum of money as he shall deem necessary for the immediate welfare of the patient. Such sum of money shall be the same as the amount required by RCW 72.02.100 to be provided to persons in need being released from correctional institutions. As funds are available, the secretary may provide payment to indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules and regulations to do so. [1973 1st ex.s. c 142 § 40.]

71.05.360 Rights of involuntarily detained persons.

(1) Every person involuntarily detained or committed under the provisions of this chapter shall be entitled to all the rights set forth in this chapter and shall retain all rights not denied him under this chapter.

(2) Each person involuntarily detained or committed pursuant to this chapter shall have the right to adequate care and individualized treatment. [1974 ex.s. c 145 § 25; 1973 1st ex.s. c 142 § 41.]

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

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

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

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

(4) To have visitors at reasonable times;

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

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

(7) Not to consent to the performance of shock treatment or surgery, except emergency life-saving surgery, upon him, and not to have shock treatment or non-emergency surgery in such circumstance unless ordered by a court pursuant to a judicial hearing in which the person is present and represented by counsel, and the court shall appoint a psychiatrist, psychologist, or physician designated by such person or his counsel to testify on behalf of such person;

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

(9) Not to have psychosurgery performed on him under any circumstances. [1974 ex.s. c 145 § 26; 1973 1st ex.s. c 142 § 42.]

71.05.380 Rights of voluntarily committed persons.

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

71.05.390 Confidential information and records—Disclosure. The fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his guardian, must be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person, not employed by the facility, who does not have the medical responsibility for the patient's care or who is not a designated county mental health professional or who is not involved in providing services under the community mental health services act, chapter 71.24 RCW;

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

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

(4) For program evaluation and/or research: *Provided*, That the secretary of social and health services adopts rules for the conduct of such evaluation and/or research. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

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

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

/s/ ----- "

(5) To the courts as necessary to the administration of this chapter.

(6) To law enforcement officers or public health officers necessary to carry out the responsibilities of their office: *Provided*, That

(a) Only the fact and date of admission, the fact and date of discharge, and the last known address shall be disclosed upon request; and

(b) The law enforcement and public health officers shall be obligated to keep such information confidential in accordance with this chapter; and

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

(7) To the attorney of the detained person.

The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained. [1975 1st ex.s. c 199 § 10; 1974 ex.s. c 145 § 27; 1973 1st ex.s. c 142 § 44.]

71.05.400 Release of information to patient's next of kin, attorney, guardian, etc.—Notification of patient's death. (1) A public or private agency shall release to a patient's next of kin, attorney, guardian, or conservator, if any,

(a) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(b) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, guardian, or conservator; and such other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator.

(2) Upon the death of a patient, his next of kin, guardian, or conservator, if any, shall be notified.

Next of kin who are of legal age and competent shall be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. [1974 ex.s. c 115 § 1; 1973 2nd ex.s. c 24 § 6; 1973 1st ex.s. c 142 § 45.]

71.05.410 Notice of disappearance of patient. When a patient would otherwise be subject to the provisions of RCW 71.05.390 and disclosure is necessary for the protection of the patient or others due to his unauthorized disappearance from the facility, and his whereabouts is

unknown, notice of such disappearance, along with relevant information, may be made to relatives and governmental law enforcement agencies designated by the physician in charge of the patient or the professional person in charge of the facility, or his professional designee. [1973 2nd ex.s. c 24 § 7; 1973 1st ex.s. c 142 § 46.]

71.05.420 Records of disclosure. When any disclosure of information or records is made as authorized by RCW 71.05.390 through 71.05.410, the physician in charge of the patient or the professional person in charge of the facility shall promptly cause to be entered into the patient's medical record the date and circumstances under which said disclosure was made, the names and relationships to the patient, if any, of the persons or agencies to whom such disclosure was made, and the information disclosed. [1973 1st ex.s. c 142 § 47.]

71.05.430 Statistical data. Nothing in this chapter shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary of the department of social and health services. [1973 1st ex.s. c 142 § 48.]

71.05.440 Action for unauthorized release of confidential information—Liquidated damages—Trebble damages—Injunction. Any person may bring an action against an individual who has wilfully released confidential information or records concerning him in violation of the provisions of this chapter, for the greater of the following amounts:

(1) One thousand dollars; or

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

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

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

71.05.450 Competency—Effect—Statement of Washington law. Competency shall not be determined or withdrawn by operation of, or under the provisions of this chapter. No person shall be presumed incompetent or lose any civil rights as a consequence of receiving evaluation or treatment for mental disorder, either voluntarily or involuntarily, or certification or commitment pursuant to this chapter or any prior laws of this state dealing with mental illness. Any person who leaves a

public or private agency following evaluation or treatment for mental disorder shall be given a written statement setting forth the substance of this section. [1973 1st ex.s. c 142 § 50.]

71.05.460 Right to counsel. Every person involuntarily detained shall immediately be informed of his right to a hearing to review the legality of his detention and of his right to counsel, by the professional person in charge of the facility providing evaluation and treatment, or his designee, and, when appropriate, by the court. If the person so elects, the court shall immediately appoint an attorney to assist him. [1973 1st ex.s. c 142 § 51.]

71.05.470 Right to examination. A person challenging his detention or his attorney, shall have the right to designate and have the court appoint a reasonably available independent physician or licensed mental health professional to examine the person detained, the results of which examination may be used in the proceeding. The person shall, if he is financially able, bear the cost of such expert information, otherwise such expert examination shall be at public expense. [1973 1st ex.s. c 142 § 52.]

71.05.480 Petitioning for release—Writ of habeas corpus. Nothing contained in this chapter shall prohibit the patient from petitioning by writ of habeas corpus for release. [1974 ex.s. c 145 § 29; 1973 1st ex.s. c 142 § 53.]

71.05.490 Present rights. Nothing in this chapter shall prohibit a person committed on or prior to January 1, 1974 from exercising a right available to him at or prior to January 1, 1974 for obtaining release from confinement. [1973 1st ex.s. c 142 § 54.]

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

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

71.05.520 Protection of rights—Staff. The department of social and health services shall have the responsibility to determine whether all rights of individuals recognized and guaranteed by the provisions of this chapter and the Constitutions of the state of Washington and the United States are in fact protected and effectively secured. To this end, the department shall assign appropriate staff who shall from time to time as may be

necessary have authority to examine records, inspect facilities, attend proceedings, and do whatever is necessary to monitor, evaluate, and assure adherence to such rights. Such persons shall also recommend such additional safeguards or procedures as may be appropriate to secure individual rights set forth in this chapter and as guaranteed by the state and federal Constitutions. [1973 1st ex.s. c 142 § 57.]

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

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

71.05.540 Standards for public and private evaluation and treatment facilities, enforcement procedures—Penalties. (1) The department shall establish standards to be met by a public or private facility to be certified as an evaluation and treatment facility, and shall fix the fees to be paid by such facility to the department for the required inspections.

(2) The department shall periodically inspect certified evaluation and treatment facilities at reasonable times and in a reasonable manner.

(3) The department shall maintain an updated list of certified evaluation and treatment facilities.

(4) Each certified evaluation and treatment facility shall file with the department, on request, such data, statistics, schedules, and information as the department reasonably requires. A certified evaluation and treatment facility which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may be removed from the list of certified evaluation and treatment facilities and its certification revoked or suspended.

(5) The department may suspend, revoke, limit, or restrict a certification, or refuse to grant a certification

for failure to conform to the law, applicable rules and regulations, or applicable standards.

(6) The superior court may restrain any evaluation and treatment facility from operating without certification or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.04 RCW, any denial, suspension, limitation, restriction, or revocation of certification, and grant other relief required to enforce the provisions of this chapter.

(7) Upon petition by the department, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him to enter at reasonable times, and examine the records, books, and accounts of any public or private evaluation and treatment facility refusing to consent to inspection or examination by the department.

(8) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter, and shall otherwise assure the effectuation of the purposes and intent of this chapter. [1973 1st ex.s. c 142 § 59.]

71.05.550 Recognition of county financial necessities. The department of social and health services, in planning and providing funding to counties pursuant to chapter 71.24 RCW, shall recognize the financial necessities imposed upon counties by implementation of this chapter and shall consider needs, if any, for additional community mental health services and facilities and reduction in commitments to state hospitals for the mentally ill accomplished by individual counties, in planning and providing such funding. The state shall provide financial assistance to the counties to enable the counties to meet all increased costs, if any, to the counties resulting from their administration of the provisions of *this 1973 amendatory act. [1973 1st ex.s. c 142 § 60.]

*Reviser's note: "this 1973 amendatory act" consists of this chapter, amendments to RCW 71.12.560, 71.12.570, 72.23.010, 72.23.070 and 72.23.100 by 1973 1st ex.s. c 142, and to the repeal of RCW 71.02-.010-71.02.300, 71.02.450, 71.02.650, 71.03.010-71.03.900, 71.12.580, 72.01.390, 72.01.400, 72.08.110, 72.23.140, 72.23.150, 72.23.220, 72.23.270 and 72.25.040.

71.05.560 Adoption of rules and regulations. The department of social and health services shall adopt such rules and regulations as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to evaluation of the quality of the program and facilities operating pursuant to this chapter, evaluation of the effectiveness and cost effectiveness of such programs and facilities, and procedures and standards for certification and other action relevant to evaluation and treatment facilities. [1973 1st ex.s. c 142 § 61.]

71.05.570 Rules of court. The supreme court of the state of Washington shall adopt such rules as it shall deem necessary with respect to the court procedures and

proceedings provided for by this chapter. [1973 1st ex.s. c 142 § 62.]

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

*Reviser's note: "this 1973 amendatory act", see note following RCW 71.05.550.

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

*Reviser's note: "this 1973 amendatory act", see note following RCW 71.05.550.

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

*Reviser's note: "this 1973 amendatory act", see note following RCW 71.05.550.

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

*Reviser's note: "This 1973 amendatory act", see note following RCW 71.05.550.

Chapter 71.06 SEXUAL PSYCHOPATHS AND PSYCHOPATHIC DELINQUENTS

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Procedure as to insane convicts: RCW 72.08.110.

Procedure as to psychopathic delinquents in custody of correctional institution: RCW 72.01.390, 72.01.400.

Telephone calls soliciting immoral acts: RCW 9.61.230–9.61.250.

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

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

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

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

"Psychopathic delinquent" means any minor who is psychopathic, and who is a habitual delinquent, if his delinquency is such as to constitute him a menace to the health, person, or property of himself or others, and the minor is not a proper subject for commitment to a state correctional school, a penal institution, to a state school for the mentally deficient as a mentally deficient person, or to a state hospital as a mentally ill person.

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

"Department" means department of social and health services.

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

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

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

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

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

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

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

71.06.060 Preliminary hearing—Commitment, or other disposition of charge. After the superintendent's report has been filed, the court shall determine whether or not the defendant is a sexual psychopath. If said defendant is found to be a sexual psychopath, the court shall commit him to the director of the department of institutions for designation of the facility for detention, care, and treatment of the sexual psychopath. If the defendant is found not to be a sexual psychopath, the court shall order the sentence to be executed, or may

discharge the defendant as the case may merit. [1967 c 104 § 2; 1959 c 25 § 71.06.060. Prior: 1951 c 223 § 7.]

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

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

Insanity plea: Chapter 10.76 RCW.

71.06.091 Post commitment proceedings, releases, and further dispositions. A sexual psychopath committed pursuant to RCW 71.06.060 shall be retained by the superintendent of the institution involved until in the superintendent's opinion he is safe to be at large, or until he has received the maximum benefit of treatment, or is not amenable to treatment, but the superintendent is unable to render an opinion that he is safe to be at large. Thereupon, the superintendent of the institution involved shall so inform whatever court committed the sexual psychopath. The court then may order such further examination and investigation of such person as seems necessary, and may at its discretion, summon such person before it for further hearing, together with any witnesses whose testimony may be pertinent, and together with any relevant documents and other evidence. On the basis of such reports, investigation, and possible hearing, the court shall determine whether the person before it shall be released unconditionally from custody as a sexual psychopath, released conditionally, returned to the custody of the institution as a sexual psychopath, or returned to the department of institutions to serve the original sentence imposed upon him. The power of the court to grant conditional release for any such person before it shall be the same as its power to grant, amend and revoke probation as provided by chapter 9.95 RCW. When the sexual psychopath has entered upon the conditional release, the state board of prison terms and paroles shall supervise such person pursuant to the terms and conditions of the conditional release, as set by the court: *Provided*, That the superintendent of the institution involved shall never release the sexual psychopath

from custody without a court release as herein set forth. [1967 c 104 § 3.]

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

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

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

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

71.06.150 Psychopathic delinquents—Petition—Filing. A petition alleging that a person is a psychopathic delinquent and requesting that such person be

brought before the court for hearing may be filed in the superior court of the county wherein such person is found. Such petition shall be made under oath and shall state the facts upon which the allegation is based. Such petition may be filed by any of the following persons:

- (1) The parent, guardian, or other person charged with the support of the alleged psychopathic delinquent.
- (2) Any county prosecuting attorney.
- (3) Any duly appointed representative of the school district in which the alleged psychopathic delinquent resides.
- (4) Any official of a public or private welfare agency.
- (5) Any superintendent of a state institution.
- (6) Any person when so directed by the juvenile court or the criminal department of the superior court.

Where the person alleged to be a psychopathic delinquent is under the jurisdiction of the juvenile court, such petition shall be filed only under the order of such juvenile court. [1959 c 25 § 71.06.150. Prior: 1951 c 223 § 16; 1949 c 198 § 42; Rem. Supp. 1949 § 6953-42.]

Juvenile courts: Chapter 13.04 RCW.

71.06.160 Petition—Court may order filing. If a minor is brought before the juvenile court or is charged with a crime in a superior court and it appears to such court at any time prior to the execution of sentence that such minor is a psychopathic delinquent, the superior court or juvenile court may suspend proceedings, and, if a superior court, may direct the prosecuting attorney to file a petition under the provisions of this chapter, or if a juvenile court, may direct the juvenile court probation officer to file a petition under the provisions of this chapter. If the minor is found to be a psychopathic delinquent under this chapter, the court ordering such petition to be filed shall dismiss other pending proceedings. If the minor is found not to be a psychopathic delinquent, he shall be returned to the superior court or juvenile court ordering filing of such petition for further proceedings. [1959 c 25 § 71.06.160. Prior: 1951 c 223 § 24; 1949 c 198 § 51; Rem. Supp. 1949 § 6953-51.]

71.06.170 Preliminary hearing—Time and place—Privacy. Upon filing of such petition the court shall fix a time and place for preliminary hearing, which shall give opportunity for the service of notice and the production and examination of witnesses. For the purpose of conducting hearings under this chapter, the court may be convened at any time and place within the county wherein the court resides and such hearing may be closed to the general public unless the guardian, attorney or guardian ad litem representing the alleged psychopathic delinquent demands an open hearing as in other civil actions. [1959 c 25 § 71.06.170. Prior: 1951 c 223 § 17; 1949 c 198 § 43; Rem. Supp. 1949 § 6953-43.]

71.06.180 Preliminary hearing—Detention pending preliminary hearing. The court at its discretion may issue a warrant of apprehension ordering the alleged psychopathic delinquent to be apprehended and detained pending preliminary hearing, which warrant shall be executed by the sheriff or other person designated by the

court. Alleged psychopathic delinquents may be detained in county juvenile detention facilities or in the custody of some suitable person or agency at the discretion of the court. [1959 c 25 § 71.06.180. Prior: 1951 c 223 § 18; 1949 c 198 §§ 45 and 46; Rem. Supp. 1949 §§ 6953-45, 6953-46.]

71.06.190 Preliminary hearing—Scope of inquiry—Evidence. Upon preliminary hearing the court shall inquire into the mental condition, delinquency record, character, and personality of the alleged psychopathic delinquent, and for this purpose shall require the testimony of two duly licensed physicians who shall have examined the alleged psychopathic delinquent. Such physicians shall file a written report of their examination and shall testify as to whether or not the minor is a psychopathic delinquent, and the facts upon which such findings are based. The court, petitioner, or guardian, or guardian ad litem representing the alleged psychopathic delinquent may produce such witnesses as they may desire and subpoenas may issue for such purposes. [1959 c 25 § 71.06.190. Prior: 1951 c 223 § 19; 1949 c 198 § 47; Rem. Supp. 1949 § 6953-47.]

71.06.200 Observation at state hospital—Report of superintendent. If the court finds that there are reasonable grounds to believe that the minor filed against is a psychopathic delinquent, it shall order such person to be detained at the nearest state hospital for the purpose of observation and examination by the superintendent thereof. Such observation shall be for a period not to exceed ninety days. Upon completion of such observation and examination the superintendent of such state hospital shall so notify the committing court, which shall cause the return of the alleged psychopathic delinquent and the superintendent shall file as promptly as possible his written report setting forth the facts upon which he bases his conclusion that the minor is or is not a psychopathic delinquent. [1959 c 25 § 71.06.200. Prior: 1951 c 223 § 20; 1949 c 198 § 48, part; Rem. Supp. 1949 § 6953-48, part.]

Transfer of juvenile from correctional institution to state hospital: RCW 72.01.390, 72.01.400.

71.06.210 Hearing on petition—Evidence—Commitment. The court shall thereupon set a date for hearing on the petition, at which hearing the guardian, petitioner, attorney, or the court of its own motion, may produce additional witnesses and evidence and may require the attendance of the superintendent as a witness. Notice of such hearing shall be given pursuant to the provisions of RCW 71.06.170. If the court finds that the minor is a psychopathic delinquent, the court shall order such person committed to such institution as may be designated by the department for the custody, care and treatment of psychopathic delinquents, until released by the superintendent thereof, which order shall be executed by the sheriff or other person designated by the court. [1959 c 25 § 71.06.210. Prior: 1951 c 223 § 21; 1949 c 198 § 48, part; Rem. Supp. 1949 § 6953-48, part.]

71.06.220 Hearings are probate matters. Hearings held under the provisions of this chapter relative to psychopathic delinquents shall be handled as probate matters. [1959 c 25 § 71.06.220. Prior: 1951 c 223 § 26.]

Probate law and procedure: Title 11 RCW.

71.06.230 Jury trial. The alleged psychopathic delinquent shall have the right to trial by jury, but demand for such trial must be filed by the guardian or attorney representing the minor on or before the date of preliminary hearing. Where such demand is filed, the court shall set a date for trial and the jury shall determine the question of psychopathic delinquency but such jury trial shall be had only after return of the superintendent's report following the preliminary period of observation. If the jury finds the minor to be a psychopathic delinquent, the court shall order such minor committed as provided for in RCW 71.06.210. Such minor may be detained pending jury trial as provided for in RCW 71.06.180. [1959 c 25 § 71.06.230. Prior: 1951 c 223 § 22.]

71.06.240 Parole and discharge. Any persons committed under the provisions of this chapter may be paroled by the superintendent of the institution wherein such person is confined whenever the superintendent is of the opinion that such person has improved to an extent that he is no longer a menace to the health, lives or property of himself or others. Such opinion shall be certified to the committing court and unless within thirty days the court orders the return of such person, the superintendent may parole him upon such conditions as the superintendent may deem advisable. After five years the superintendent shall review the record of such psychopathic delinquent, and if in his opinion such psychopathic delinquent remains safe to be at large, he shall discharge him. In addition, the superintendent may grant temporary visit paroles to psychopathic delinquents; such temporary visit paroles shall not exceed sixty days in duration, and at the expiration of such period the superintendent shall either return the psychopathic delinquent to the institution or grant a parole, as otherwise provided herein. The superintendent may grant temporary visit paroles on such conditions as he may deem advisable, but notice of such temporary visit parole shall be given to the sheriff of the county in which the psychopathic delinquent will be on temporary visit parole and the chief of police of any city or town said delinquent may be visiting. [1959 c 25 § 71.06.240. Prior: 1957 c 35 § 1; 1951 c 223 § 23; 1949 c 198 § 50; Rem. Supp. 1949 § 6953-50.]

71.06.250 State hospitals for care of psychopathic delinquents—Treatment—Laws applicable. The director may designate any existing state institutions or portion thereof for the care and treatment of psychopathic delinquents: *Provided, however,* That such institution shall provide psychiatric care and treatment. Psychopathic delinquents committed under this chapter shall be subject to all laws pertaining to the administration of the institution in which confined. [1959 c 25 § 71.06.250. Prior: 1951 c 223 § 25; 1949 c 198 § 48, part; Rem. Supp. 1949 § 6953-48, part.]

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

Chapter 71.12 PRIVATE ESTABLISHMENTS

Sections

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Private and public facilities for mentally ill, commitment procedures: RCW 72.23.070.

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71.12.455 Definitions. As used in this chapter, "establishment" and "institution" mean and include every private hospital, sanitarium, home, or other place receiving or caring for any insane, alleged insane, mentally ill, or mentally incompetent person, or alcoholic. [1959 c 25 § 71.12.455. Prior: 1949 c 198 § 53; Rem. Supp. 1949 § 6953-52a. Formerly RCW 71.12.010, part.]

71.12.460 License to be obtained—Penalty. No person, association, or corporation, shall establish or keep, for compensation or hire, an establishment as defined in this chapter without first having obtained a

license therefor from the department of health, and having paid the license fee provided in this chapter. Any person who carries on, conducts, or attempts to carry on or conduct an establishment as defined in this chapter without first having obtained a license from the department of health, as in this chapter provided, is guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. The managing and executive officers of any corporation violating the provisions of this chapter shall be liable under the provisions of this chapter in the same manner and to the same effect as a private individual violating the same. [1959 c 25 § 71.12.460. Prior: 1949 c 198 § 54; Rem. Supp. 1949 § 6953-53.]

71.12.470 License application—Fees. Every application for a license shall be accompanied by a plan of the premises proposed to be occupied, describing the capacities of the buildings for the uses intended, the extent and location of grounds appurtenant thereto, and the number of patients proposed to be received therein, with such other information, and in such form, as the department requires. The application shall be accompanied by the proper license fee. The amount of the license fee for each fiscal year is fixed by the following schedule:

(1) For establishments licensed to receive not more than six patients, the fee is five dollars;

(2) For establishments licensed to receive more than six but not more than twenty-five patients, the fee is twenty-five dollars;

(3) For establishments licensed to receive more than twenty-five but not more than fifty patients, the fee is fifty dollars;

(4) For establishments licensed to receive more than fifty patients, the fee is seventy-five dollars.

In the case of the issuance of a license on or after the first day of January next succeeding the beginning of the fiscal year, the license fee for the remainder of the fiscal year is one-half the sum fixed for the entire fiscal year. The department shall require a license fee in situations where licensed establishments increase their number of patients during any fiscal year, based on a pro rata charge under the schedule set forth herein. No additional fee will be required in the event of an application for transfer of a license to another person to operate the same establishment. No additional license fee shall be required for the transfer of the license issued in the name of one person to operate an establishment at a certain location where an application is received to transfer that license to the same person to operate an establishment at a different location. [1959 c 25 § 71.12.470. Prior: 1949 c 198 § 56; Rem. Supp. 1949 § 6953-55.]

71.12.480 Examination of premises before granting license. The department of health shall not grant any such license until it has made an examination of the premises proposed to be licensed and is satisfied that they are substantially as described, and are otherwise fit and suitable for the purposes for which they are

designed to be used, and that such license should be granted. [1959 c 25 § 71.12.480. Prior: 1949 c 198 § 57; Rem. Supp. 1949 § 6953-56.]

71.12.485 Fire protection—Duties of state fire marshal. Standards for fire protection and the enforcement thereof, with respect to all establishments to be licensed hereunder, shall be the responsibility of the state fire marshal, who shall adopt such recognized standards as may be applicable to such establishments for the protection of life against the cause and spread of fire and fire hazards. The department of health, upon receipt of an application for a license, or renewal of a license, shall submit to the state fire marshal in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the state fire marshal or his deputy shall make an inspection of the establishment to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as promulgated by the state fire marshal, he shall promptly make a written report to the establishment and the department of health as to the manner and time allowed in which the premises must qualify for a license and set forth the conditions to be remedied with respect to fire regulations. The department of health, applicant or licensee shall notify the state fire marshal upon completion of any requirements made by him, and the state fire marshal or his deputy shall make a reinspection of such premises. Whenever the establishment to be licensed meets with the approval of the state fire marshal, he shall submit to the department of health a written report approving same with respect to fire protection before a full license can be issued. The state fire marshal shall make or cause to be made inspections of such establishments at least annually. The department of health shall not license or continue the license of any establishment unless and until it shall be approved by the state fire marshal as herein provided.

In cities which have in force a comprehensive building code, the provisions of which are determined by the state fire marshal to be equal to the minimum standards of the state fire marshal for such establishments, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the state fire marshal or his deputy, and they shall jointly approve the premises before a full license can be issued. [1959 c 224 § 1.]

71.12.490 Expiration and renewal of license. All licenses issued under the provisions of this chapter shall expire on a date to be set by the state board of health, but no license issued pursuant to this chapter shall exceed twelve months in duration: *Provided*, That when the annual license renewal date of a previously licensed private establishment is set by the board on a date less than twelve months prior to the expiration date of a license in effect at the time of reissuance, the license fee shall be prorated on a monthly basis and a credit be allowed at the first renewal of a license for any period of one month or more covered by the previous license. Application for renewal of the license, accompanied by

the necessary fee, shall be filed with the department of social and health services annually, not less than ten days prior to its expiration and if application is not so filed, the license shall be automatically canceled. [1971 ex.s. c 247 § 4; 1959 c 25 § 71.12.490. Prior: 1949 c 198 § 59; Rem. Supp. 1949 § 6953-58.]

71.12.500 Examination of premises as to compliance with license—Revocation, suspension of license. The department of health may at any time examine and ascertain how far a licensed establishment is conducted in compliance with the license therefor. If the interests of the patients of the establishment so demand, the department may, for just and reasonable cause, suspend or revoke any such license after notice and hearing. [1959 c 25 § 71.12.500. Prior: 1949 c 198 § 58; Rem. Supp. 1949 § 6953-57.]

71.12.510 Examination and visitation in general. The department may at any time cause any establishment as defined in this chapter to be visited and examined. [1959 c 25 § 71.12.510. Prior: 1949 c 198 § 60; Rem. Supp. 1949 § 6953-59.]

71.12.520 Scope of examination. Each such visit may include an inspection of every part of each establishment. The representatives of the department of health may make an examination of all records, methods of administration, the general and special dietary, the stores and methods of supply, and may cause an examination and diagnosis to be made of any person confined therein. The representatives of the department may examine to determine their fitness for their duties the officers, attendants, and other employees, and may talk with any of the patients apart from the officers and attendants. [1959 c 25 § 71.12.520. Prior: 1949 c 198 § 61; Rem. Supp. 1949 § 6953-60.]

71.12.530 Conference with management—Improvement. The representatives of the department of health may, from time to time, at times and places designated by the department, meet the managers or responsible authorities of such establishments in conference, and consider in detail all questions of management and improvement of the establishments, and may send to them, from time to time, written recommendations in regard thereto. [1959 c 25 § 71.12.530. Prior: 1949 c 198 § 62; Rem. Supp. 1949 § 6953-61.]

71.12.540 Recommendations to be kept on file—Records of inmates. The authorities of each establishment as defined in this chapter shall place on file in the office of the establishment the recommendations made by the department of health as a result of such visits, for the purpose of consultation by such authorities, and for reference by the department representatives upon their visits. Every such establishment shall keep records of every person admitted thereto as follows and shall furnish to the department, when required, the following data: Name, age, sex, marital status, date of admission, voluntary or other commitment, name of physician,

diagnosis, and date of discharge. [1959 c 25 § 71.12.540. Prior: 1949 c 198 § 63; Rem. Supp. 1949 § 6953-62.]

71.12.550 Local authorities may also prescribe standards. This chapter shall not prevent local authorities of any city, or city and county, within the reasonable exercise of the police power, from adopting rules and regulations, by ordinance or resolution, prescribing standards of sanitation, health and hygiene for establishments as defined in this chapter, which are not in conflict with the provisions of this chapter, and requiring a certificate by the local health officer, that the local health, sanitation and hygiene laws have been complied with before maintaining or conducting any such institution within such city or city and county. [1959 c 25 § 71.12.550. Prior: 1949 c 198 § 64; Rem. Supp. 1949 § 6953-63.]

71.12.560 Voluntary patients—Receipt authorized—Application—Report. The person in charge of any private institution, hospital, or sanitarium which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill or deranged may receive therein as a voluntary patient any person suffering from mental illness or derangement who is a suitable person for care and treatment in the institution, hospital, or sanitarium, who voluntarily makes a written application to the person in charge for admission into the institution, hospital or sanitarium. After six months of continuous inpatient treatment as a voluntary patient in a private institution, hospital, or sanitarium, the person in charge shall forward to the office of the department of social and health services a record of the voluntary patient showing the name, residence, age, sex, place of birth, occupation, marital status, date of admission to the institution, hospital, or sanitarium, and such other information as may be required by rule of the department of social and health services. [1974 ex.s. c 145 § 1; 1973 1st ex.s. c 142 § 1; 1959 c 25 § 71.12.560. Prior: 1949 c 198 § 65; Rem. Supp. 1949 § 6953-64.]

Severability—Construction—Effective date—1973 1st ex.s. c 142: See RCW 71.05.900-71.05.930.

Public and private facilities for mentally ill, commitment procedures, rights: RCW 72.23.070.

71.12.570 Communications by patients—Rights. No person in an establishment as defined in this chapter shall be restrained from sending written communications of the fact of his detention in such establishment to a friend, relative, or other person. The physician in charge of such person and the person in charge of such establishment shall send each such communication to the person to whom it is addressed. All persons in an establishment as defined by chapter 71.12 RCW shall have no less than all rights secured to involuntarily detained persons by RCW 71.05.360 and 71.05.370 and to voluntarily admitted or committed persons pursuant to RCW 71.05.050 and 71.05.380. [1973 1st ex.s. c 142 § 2; 1959 c 25 § 71.12.570. Prior: 1949 c 198 § 66; Rem. Supp. 1949 § 6953-65.]

Severability—Construction—Effective date—1973 1st ex.s. c 142: See RCW 71.05.900–71.05.930.

71.12.590 Revocation of license for noncompliance—Exemption as to Christian Science establishments. Failure to comply with any of the provisions of RCW 71.12.550 through *71.12.580 shall constitute grounds for revocation of license: *Provided, however,* That 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 or patients in any establishment, as defined in this chapter conducted in accordance with the practice and principles of the body known as Church of Christ, Scientist. [1959 c 25 § 71.12.590. Prior: 1949 c 198 § 68; Rem. Supp. 1949 § 6953–67.]

***Reviser's note:** RCW "71.12.580" was repealed by section 66, chapter 142, Laws of 1973.

71.12.640 Prosecuting attorney shall prosecute violations. The prosecuting attorney of every county shall, upon application by the department of health or its authorized representatives, institute and conduct the prosecution of any action brought for the violation within his county of any of the provisions of this chapter. [1959 c 25 § 71.12.640. Prior: 1949 c 198 § 55; Rem. Supp. 1949 § 6953–54.]

Chapter 71.16

MENTAL RETARDATION FACILITIES AND COMMUNITY MENTAL HEALTH CENTERS

Sections

- 71.16.010 State participation in federal programs.
- 71.16.020 Mental health and mental retardation advisory council—Authorized—Composition.
- 71.16.030 Mental health and mental retardation advisory council—Terms—Vacancies.
- 71.16.040 Mental health and mental retardation advisory council—Powers and duties.

Comprehensive community health centers, mental health and mental retardation facilities: Chapter 70.10 RCW.

71.16.010 State participation in federal programs. The governor is hereby authorized and empowered to take whatever action is necessary to enable the state to participate in the programs set forth in the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (Public Law 88–164) (the "federal law" herein). The governor through the designated agency is authorized and empowered to accept and disburse federal grants or federal matching or other funds or donations from any source, when made, granted or donated for a purpose covered by the federal law. [1965 c 75 § 1.]

71.16.020 Mental health and mental retardation advisory council—Authorized—Composition. As a part of the state plan for submission under the federal act, the governor may appoint a mental health and mental retardation advisory council, consisting of at least eleven members, as follows:

- (1) The director of the department of health;
- (2) The director of the department of institutions;

(3) The director of the department of public assistance;

(4) The superintendent of public instruction;

(5) At least seven members to include representatives of nongovernment organizations or groups or citizens concerned with planning, operation or utilization of community mental health and mental retardation centers or other mental health or mental retardation facilities, and to include representatives of consumers of the services provided by such facilities. [1965 c 75 § 2.]

71.16.030 Mental health and mental retardation advisory council—Terms—Vacancies. As designated by the governor, three members appointed under RCW 71.16.020(5) shall serve for a term of two years from the time of their appointment and four members shall serve for a term of three years. Members appointed in addition to seven in number shall serve for a term of two years from the time of their appointment.

Each member appointed under RCW 71.16.020(5) shall hold office at the pleasure of the governor, notwithstanding the member's term. Any vacancy shall be filled by appointment by the governor under the provisions of RCW 71.16.020(5). [1965 c 75 § 3.]

71.16.040 Mental health and mental retardation advisory council—Powers and duties. The mental retardation and mental health advisory council shall advise and consult with the governor with respect to:

- (1) Programs for the construction of mental retardation facilities and community mental health centers;
- (2) The development of rules, regulations, and standards for the operation of such facilities; and
- (3) Development and review of plans for mental health and mental retardation.

The advisory council shall have any additional powers assigned to it by the governor necessary to obtain programs to meet the requirement of the federal act. [1965 c 75 § 4.]

Chapter 71.20

STATE AND LOCAL SERVICES FOR MENTALLY RETARDED AND DEVELOPMENTALLY DISABLED

Sections

- 71.20.010 Declaration of purpose.
- 71.20.015 "Developmentally disabled" defined.
- 71.20.020 Participation in federal programs authorized—Other aid.
- 71.20.030 Duties of state departments and agencies.
- 71.20.040 Community boards authorized—Composition—Expenses.
- 71.20.050 Designation of state agency to work with county authorities—Eligibility, application, for state funds.
- 71.20.060 Community board services.
- 71.20.070 Community mental retardation and other developmental disability programs—Services.
- 71.20.075 Confidentiality of information.
- 71.20.080 Consideration of applications for state aid—Rules and regulations.
- 71.20.090 Community boards may receive and spend grants and donations.
- 71.20.100 Expenditures of county funds subject to county fiscal laws.

71.20.110 Tax levy directed—Allocation of funds for federal matching funds purposes.

Agreements by department to pay others for care, treatment and maintenance of mentally retarded and developmentally disabled: RCW 72.33.800–72.33.815.

71.20.010 Declaration of purpose. It is declared to be the policy of the legislature of the state of Washington to authorize the state, as part of its program to promote mental health, to develop and coordinate state services for mentally retarded persons; to encourage research and staff training for state and local personnel working with mentally retarded persons; and to cooperate with communities to encourage the establishment and development of services to the mentally retarded through locally administered and locally controlled programs. The complexities of mental retardation require the services of many state departments as well as those of the community. Services should be planned and provided as a part of a continuum. A pattern of facilities, services and eligibility should be established which is sufficiently complete to meet the needs of each retarded person regardless of age or degree of handicap, and at each state of his life's development.

It is the intention of the legislature herein that there be established a central point of referral in the community for the mentally retarded and their families and the establishment of ongoing points of contact with the mentally retarded and their families so that they may have a place of entry for services and return as the need may appear. Further, it is necessary to provide a link between the mentally retarded and sources in the community, including state departments, to the end that the mentally retarded and their families may have access to each of the facilities best suited to them throughout the life of the retarded person. [1967 ex.s. c 110 § 1.]

71.20.015 "Developmentally disabled" defined. Persons "developmentally disabled" as used in *this amendatory act are those persons having a "developmental disability" as defined in Public Law 91–517 [42 USCA 2691(1)] as now or hereafter amended. [1974 ex.s. c 71 § 2.]

**Reviser's note: "this amendatory act" [1974 ex.s. c 71] consists of RCW 71.20.015, 71.20.075 and the amendments to RCW 71.20.040, 71.20.050, 71.20.060, 71.20.070, 71.20.090, 71.20.110, 72.33.800, 72.33.805, 72.33.810 and 72.33.815.*

Severability—1974 ex.s. c 71: "If any provision of this 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." [1974 ex.s. c 71 § 13.] This applies to RCW 71.20.015, 71.20.075 and the amendments to RCW 71.20.040, 71.20.050, 71.20.060, 71.20.070, 71.20.090, 71.20.110, 72.33.800, 72.33.805, 72.33.810 and 72.33.815.

71.20.020 Participation in federal programs authorized—Other aid. The governor is authorized and empowered to take whatever action is necessary to enable the state to participate in the manner set forth in this chapter in any programs provided by any federal law and to designate the state agencies authorized to administer within this state the several federal acts providing federal moneys to assist in providing services and training in the state or local level for mentally retarded

persons, and personnel working with such persons. Such state agencies are authorized and empowered to apply for and accept and disburse federal grants, matching funds, or other funds or gifts or donations from any source available for use by the state or by communities to provide more adequate services, training and rehabilitation of the mentally retarded. [1967 ex.s. c 110 § 2.]

71.20.030 Duties of state departments and agencies. Each state department or agency administering federal or state funds which provide services to the mentally retarded, or research or staff training in the field of mental retardation, shall consult with the mental retardation and mental health advisory council established pursuant to RCW 71.16.020 and shall:

(1) Investigate and determine the nature and extent of services within its legal authority which are presently available to mentally retarded persons in this state;

(2) Develop and prepare any state plan or application which may be necessary to establish the eligibility of the state or any community to participate in any program established by the federal government relating to mentally retarded persons;

(3) Cooperate with other state agencies providing services to the mentally retarded to determine the availability of services and facilities within the state, and to coordinate state and local services in order to maximize services to mentally retarded persons and their families;

(4) Review and approve proposed plans required to be submitted for the expenditure of funds in community mental retardation services submitted by any community under the provisions of this chapter;

(5) Provide consultant and staff training for state and local personnel working in the field of mental retardation. [1967 ex.s. c 110 § 3.]

71.20.040 Community boards authorized—Composition—Expenses. The county commissioners of any county or the boards of county commissioners of more than one county by joint action, are authorized to appoint a community board to plan services for the mentally retarded and other developmentally disabled, to provide directly or indirectly a continuum of care and services to mentally retarded and other developmentally disabled persons and their families, and to coordinate all of the local mental retardation and developmental disability services within the county or counties served by such community board. Members to be appointed to the board shall include but not be limited to representatives of public, private or voluntary agencies, and local governmental units which participate in a program for mentally retarded and other developmentally disabled persons, and private citizens knowledgeable or interested in services to the mentally retarded and other developmentally disabled in the community.

The board shall consist of not less than nine nor more than fifteen members who shall be appointed by the board or boards of county commissioners for three year terms, and until their successors are appointed and qualified. The members of the community board shall not be compensated for the performance of their duties as members of the community board, but may be paid

subsistence rates and mileage in the amounts prescribed by *RCW 36.17.030 as now or hereafter amended. [1974 ex.s. c 71 § 3; 1967 ex.s. 110 § 4.]

*Reviser's note: "RCW 36.17.030" was repealed by section 1, chapter 24, Laws of 1974 ex. sess.

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

71.20.050 Designation of state agency to work with county authorities—Eligibility, application, for state funds. The governor is authorized to designate a state department as the agency to work with the county commissioners and the community boards appointed by the commissioners to coordinate and provide local services for the mentally retarded and other developmentally disabled and their families. The department is authorized to promulgate rules and regulations establishing the eligibility of each community board for state funds to be used for the work of the board in coordinating and providing services to the mentally retarded and other developmentally disabled and their families. The application for state funds shall be made by the community board with the approval of the county commissioners or by the county commissioners on behalf of the community board. [1974 ex.s. c 71 § 4; 1967 ex.s. c 110 § 5.]

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

71.20.060 Community board services. The state agency designated by the governor pursuant to RCW 71.20.050 as now or hereafter amended may require by rule and regulation that in order to be eligible for state funds, community boards shall provide the following indirect services to the community:

(1) Serve as an information and referral agency within the community for mentally retarded and other developmentally disabled persons and their families;

(2) Coordinate all local services for the mentally retarded and other developmentally disabled and their families to insure the maximum utilization of all services available;

(3) Make comprehensive plans for present and future development and reasonable progress toward development of comprehensive plans for the coordination of all local services to the mentally retarded and other developmentally disabled. [1974 ex.s. c 71 § 5; 1967 ex.s. c 110 § 6.]

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

71.20.070 Community mental retardation and other developmental disability programs—Services. Community mental retardation and other developmental disability programs which may be provided directly by community boards authorized by RCW 71.20.040 as now or hereafter amended pursuant to rules and regulations adopted by the secretary of the department of social and health services may consist of any or all of the following services:

(1) Diagnostic and evaluation services of mentally retarded and other developmentally disabled persons;

(2) Medical and dental services for those mentally retarded and other developmentally disabled individuals unable to obtain private care;

(3) Psychiatric services of those mentally retarded and other developmentally disabled unable to obtain private care in cooperation with any existing community mental health program;

(4) Group training homes providing full or part time care, support and maintenance for mentally retarded and other developmentally disabled persons: *Provided*, That nothing contained in *this amendatory act shall be construed so as to prevent or limit state funding of group training homes or group homes pursuant to chapter 72.33 RCW, as now or hereafter amended;

(5) Facilities for vocational training and education of mentally retarded and other developmentally disabled persons;

(6) Day care centers for mentally retarded and other developmentally disabled persons;

(7) Informational service to the general public and educational services furnished by qualified personnel to schools, courts, health and welfare agencies and other appropriate public or private agencies or groups;

(8) Consultant services to public or private agencies for the promotion and coordination of services to the mentally retarded and other developmentally disabled;

(9) Family counseling services to families with mentally retarded and other developmentally disabled children;

(10) Recreation programs for mentally retarded and other developmentally disabled persons;

(11) Transportation services for the mentally retarded and other developmentally disabled persons;

(12) Legal services for the mentally retarded and other developmentally disabled persons and their families for aiding and insuring services to the mentally retarded or other developmentally disabled person unable to obtain private legal services;

(13) Home care services for the mentally retarded and other developmentally disabled persons;

(14) Any other services or facilities necessary to provide a continuum of care for the mentally retarded and other developmentally disabled persons not otherwise available. [1974 ex.s. c 71 § 6; 1967 ex.s. c 110 § 7.]

*Reviser's note: "this amendatory act", see note following RCW 71.20.015.

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

71.20.075 Confidentiality of information. In order for the community board to coordinate and provide required services for the mentally retarded and other developmentally disabled persons pursuant to *this amendatory act, it shall be eligible to obtain such confidential information from public and/or private schools and the department of social and health services as is necessary to accomplish the purposes of *this amendatory act. Such information will be kept in accordance with state law and such rules and regulations promulgated by the secretary of the department of social and health services under chapter 34.04 RCW to permit the use of such information to coordinate and plan such services; all persons permitted access to or the use of such information must sign an oath of confidentiality, substantially as follows:

"As a condition of obtaining information from (fill in facility, agency, or person) I, -----, agree not to divulge, publish or otherwise make known to unauthorized persons or the public any information obtained in the course of using such confidential information, where release of such information may possibly make the person who received such services identifiable. I recognize that unauthorized release of confidential information may subject me to civil liability under provisions of state law." [1974 ex.s. c 71 § 1.]

*Reviser's note: "this amendatory act", see note following RCW 71.20.015.

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

71.20.080 Consideration of applications for state aid—Rules and regulations. The state agency responsible for the administration of a state grant to a community board shall review the application from the community board or the board of county commissioners. The agency may approve such application if it meets the requirements of this chapter and the rules and regulations promulgated by the agency which establish the eligibility requirements to be met by the applicant in addition to the submission of a plan for coordination of services and for providing a continuum of such services as provided in RCW 71.20.060. The agency shall develop rules and regulations to assist in determining the amount of the grant to be made to a community board. These rules and regulations shall take into consideration the population of the area served, the need of the area, and the ability of the community to provide funds for the continuum of care. [1967 ex.s. c 110 § 8.]

71.20.090 Community boards may receive and spend grants and donations. A community board provided for in RCW 71.20.040 as now or hereafter amended is authorized to receive and spend funds received from the state under this chapter, or any federal funds received through any state agency, or any gifts or donations received by it for the benefit of the mentally retarded or other developmentally disabled persons. [1974 ex.s. c 71 § 7; 1967 ex.s. c 110 § 9.]

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

71.20.100 Expenditures of county funds subject to county fiscal laws. Expenditures of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1967 ex.s. c 110 § 10.]

71.20.110 Tax levy directed—Allocation of funds for federal matching funds purposes. In order to provide additional funds for the coordination of community mental retardation and other developmental disability services and to provide community mental retardation, other developmental disability, or mental health services, the board of county commissioners of each county in the state shall budget and levy annually a tax in a sum equal to the amount which would be raised by a levy of two and one-half cents per thousand dollars of assessed value against the taxable property in the county to be used for such purposes: *Provided*, That all or part of the

funds collected from the tax levied for the purposes of this section may be transferred to the state of Washington, department of social and health services, for the purpose of obtaining federal matching funds to provide and coordinate community mental retardation, other developmental disability, and mental health services. In the event a county elects to transfer such tax funds to the state for this purpose, the state shall grant these moneys and the additional funds received as matching funds to service-providing community agencies or community boards in the county which has made such transfer, pursuant to the plan approved by the county, as provided by chapters 71.16, 71.20, 71.24, and 71.28 RCW, all as now or hereafter amended. [1974 ex.s. c 71 § 8; 1973 1st ex.s. c 195 § 85; 1971 ex.s. c 84 § 1; 1970 ex.s. c 47 § 8; 1967 ex.s. c 110 § 16.]

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

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

Chapter 71.24

COMMUNITY MENTAL HEALTH SERVICES ACT

Sections

- 71.24.010 Short title—Purpose.
- 71.24.020 Definitions.
- 71.24.030 Grants to counties—Programs and services—Inservice training.
- 71.24.040 Establishment of programs by county commissioners authorized—Joint county action.
- 71.24.050 Methods of providing mental health services—Responsibility of supervisor or contractor.
- 71.24.060 Community mental health program administrative boards—Appointment—Term—Composition—Expenses.
- 71.24.070 Community mental health program administrative boards—Duties.
- 71.24.080 Supervisor of community mental health services—Appointment—Residence—Full or part time.
- 71.24.090 Supervisor of community mental health services—Powers and duties.
- 71.24.100 Joint county agreements—Required provisions.
- 71.24.110 Joint county agreements—Permissive provisions.
- 71.24.120 Contracts for services and facilities—Who may supply—Membership of supervisor in contracting organization.
- 71.24.130 Proposed expenditure plan prerequisite to reimbursement by state—Review—Award.
- 71.24.140 Reimbursable expenditures.
- 71.24.150 Reimbursement by state to counties—Amount—Period.
- 71.24.160 Proof as to uses made of increases in state matching funds.
- 71.24.165 Level of state financial support not to be less than amounts paid immediately prior to July 1, 1967.
- 71.24.190 Department to promulgate rules—Travel expenses for attending conferences.
- 71.24.200 Expenditures of county funds subject to county fiscal laws.
- 71.24.210 Payment by patients for services.
- 71.24.220 Reimbursement may be withheld for noncompliance with chapter or regulations.
- 71.24.230 Department designated "state mental health authority"—Agreements with federal agencies.
- 71.24.240 County program plans to be approved by director prior to submittal to federal agency.
- 71.24.250 County commissioners may accept and expend gifts and grants.
- 71.24.900 Effective date—1967 ex.s. c 111.

Comprehensive community health centers: Chapter 70.10 RCW.

71.24.010 Short title—Purpose. This chapter shall be known as the community mental health services act. It is intended to encourage and to give financial assistance to local governments in the development of community mental health programs adequate in scope and quality to their needs. [1967 ex.s. c 111 § 1.]

71.24.020 Definitions. As used in this chapter:

(1) "Secretary" shall mean the secretary of the department of social and health services or such officer of the department as he may designate to carry out in whole or in part the administration of the provisions of this chapter.

(2) "Department" shall mean the department of social and health services.

(3) "Mental health needs", "mental health programs" and "mental health services" as used in this chapter shall include but not be limited to all those items set forth in RCW 71.24.030. [1971 ex.s. c 304 § 6; 1967 ex.s. c 111 § 2.]

71.24.030 Grants to counties—Programs and services—Inservice training. The secretary is authorized, pursuant to the provisions of this chapter and the rules and regulations promulgated to effectuate its purposes, to make grants to assist counties or combinations of counties in the establishment and operation of community mental health programs to provide one or more of the following services:

(1) Outpatient diagnostic and treatment services.

(2) Inpatient psychiatric services.

(3) Rehabilitation services for patients with psychiatric illnesses.

(4) Informational services to the general public and educational services furnished by qualified mental health personnel to schools, courts, health agencies, welfare agencies, probation departments and other appropriate public or private agencies or groups.

(5) Consultant services to public or private agencies for the promotion and coordination of services that preserve mental health and for the early recognition and management of conditions that might develop into psychiatric illnesses.

(6) Inpatient or outpatient care, treatment or rehabilitation services of persons using controlled substances in violation of chapter 69.50 RCW.

(7) Such services as are set forth in subsection (4) which pertain to the education and information about and prevention of problems of drug abuse.

Such inservice training as may be necessary in providing any of the foregoing services shall be proper items of expenditure in connection therewith. [1973 1st ex.s. c 155 § 5; 1972 ex.s. c 122 § 30; 1971 ex.s. c 304 § 7; 1967 ex.s. c 111 § 3.]

Effective date—1972 ex.s. c 122: See note following RCW 70.96A.010.

Drug and alcohol rehabilitation, education programs: Chapter 69.54 RCW.

71.24.040 Establishment of programs by county commissioners authorized—Joint county action. The board of county commissioners of any county, or the

boards of county commissioners of two or more counties jointly by agreement, may by ordinance or resolution establish a community mental health program which shall be organized, operated, and financed according to the provisions of this chapter. [1967 ex.s. c 111 § 4.]

71.24.050 Methods of providing mental health services—Responsibility of supervisor or contractor. The board or boards of county commissioners, after receipt of recommendations from the community mental health program administrative board, may provide mental health services directly which shall be administered by a supervisor of community mental health services, or may contract for such services from a nonprofit corporation or corporations or secure such services through a local health department. Services obtained on contract from a nonprofit corporation or corporations or through a local health department shall be subject to the provisions of this chapter, except that those provisions requiring the appointment of a supervisor of community mental health services shall be inapplicable. Such nonprofit corporation or corporations or local health departments shall be responsible for carrying out the duties of a supervisor of mental health services as set forth in RCW 71.24.090 and as otherwise provided in this chapter, or such part or parts of that responsibility which may be deemed appropriate in accordance with the services called for in the contract. [1967 ex.s. c 111 § 5.]

71.24.060 Community mental health program administrative boards—Appointment—Term—Composition—Expenses. Every county or combination of counties desirous of establishing a community mental health program shall, before it may come within the provisions of this chapter, establish a community mental health program administrative board which shall be composed of not less than nine nor more than fifteen members. The members of such administrative board shall be appointed by the board or boards of county commissioners of the county or counties establishing the community mental health program for three year terms and until their successors are appointed and qualified. Membership of the community mental health program administrative board shall be representative of the community and shall include consumer and minority group representation. No more than four elected or appointed city or county officials may serve on such administrative board at the same time. The members of the community mental health program administrative board shall not be compensated for the performance of their duties as members of the administrative board but may be paid subsistence rates and mileage in the amounts prescribed by RCW 36.17.030 as now or hereafter amended. [1971 ex.s. c 204 § 1; 1967 ex.s. c 111 § 6.]

71.24.070 Community mental health program administrative boards—Duties. The community mental health program administrative board shall:

(1) Review and evaluate the mental health needs, services, facilities and special problems of the area to be served by the community mental health program.

(2) Advise the county commissioners as to a program of community mental health services, which program shall reflect the fullest feasible utilization of already existing services, and, when appropriate, advise the county commissioners concerning the appointment of a supervisor of community mental health services.

(3) Receive and review all applications for financial support under the provisions of this chapter submitted by a nonprofit corporation, local health department, or supervisor of community mental health services and submit recommendations concerning these applications to the board or boards of county commissioners.

(4) After adoption of a program, supervise the financial and service components of the mental health program through the supervisor of community mental health services, or through a nonprofit corporation or corporations or a local health department or any combination thereof in order to be assured that actual expenditures and programs remain consistent with the agreements contained in the application as provided.

(5) Submit annually to the county commissioners a report of the activities of the community mental health program, including a financial accounting of expenditures.

(6) Submit annually to the county commissioners for approval, a plan of proposed expenditures. [1967 ex.s. c 111 § 7.]

71.24.080 Supervisor of community mental health services—Appointment—Residence—Full or part time. The supervisor of community mental health services shall be appointed by the county commissioners of the county or combination of counties involved, subject to the approval of the community mental health program administrative board. Applicants for such position need not be residents of the county, city, or state, and may be employed on a full or part time basis. [1967 ex.s. c 111 § 8.]

71.24.090 Supervisor of community mental health services—Powers and duties. The supervisor of community mental health services shall have the following powers and duties:

(1) He shall serve as chief executive officer of the community mental health program.

(2) He shall exercise general supervision over mental health services furnished, operated, or supported.

(3) He shall recommend to the community mental health program administrative board the provision of services, establishment of facilities, contracts for services or facilities, and other matters necessary or desirable to accomplish the purposes of this chapter.

(4) He shall submit an annual report to the community mental health program administrative board reporting all activities of the community mental health program, including a financial accounting of expenditures and a proposed budget of anticipated expenditures for the ensuing year.

(5) He may carry on such studies as are appropriate for the discharge of his duties, including the treatment and prevention of psychiatric or emotional disorders. [1967 ex.s. c 111 § 9.]

71.24.100 Joint county agreements—Required provisions. Any agreement between the board of commissioners of two or more counties, for the establishment of a community mental health program shall provide:

(1) That each county shall bear a share of the cost of mental health services.

(2) That the treasurer of one participating county shall be the custodian of funds made available for the purposes of such mental health services, and that the treasurer may make payments from such funds upon audit by the appropriate auditing officer of the county for which he is treasurer. [1967 ex.s. c 111 § 10.]

71.24.110 Joint county agreements—Permissive provisions. Such agreement may also provide:

(1) For the joint supervision or operation of services and facilities or for the supervision or operation of service and facilities by one participating county under contract for the other participating counties.

(2) For the appointments of members of the community mental health program administrative board between or among participating counties.

(3) That for specified purposes, officers and employees of a community mental health program shall be considered to be officers and employees of one participating county only.

(4) For such other matters as are necessary or proper to effectuate the purposes of this chapter. [1967 ex.s. c 111 § 11.]

71.24.120 Contracts for services and facilities—Who may supply—Membership of supervisor in contracting organization. The board or boards of county commissioners may contract for services and facilities with any hospital, clinic, laboratory or other similar institution, or with a nonprofit corporation or corporations. Any such contract, when it has received prior approval from the director, may be entered into notwithstanding that the supervisor of community mental health services is a member of the medical or consultant staff of such hospital, clinic, laboratory, institution, or nonprofit corporation. [1967 ex.s. c 111 § 12.]

71.24.130 Proposed expenditure plan prerequisite to reimbursement by state—Review—Award. To establish eligibility for reimbursement by the department, a board or boards of county commissioners operating or administering a community mental health program shall submit annually to the director a plan for proposed expenditures. The director shall review such plan to determine compliance with the requirements established in this chapter, and, pursuant to the rules and regulations promulgated by the department, shall fix the amount subject to reimbursement. [1967 ex.s. c 111 § 13.]

71.24.140 Reimbursable expenditures. Expenditures incurred by the community mental health program for the items and services specified in RCW 71.24.030 shall, in accordance with the regulations of the director, be subject to reimbursement whether incurred by direct or

joint operation of such services or whether such community mental health services are administered and operated contractually or through a local health department as provided by RCW 71.24.050. [1967 ex.s. c 111 § 14.]

71.24.150 Reimbursement by state to counties—Amount—Period. Except as hereinafter provided, there shall be paid to each county on account of expenditures made for a community mental health program subject to reimbursement by the department pursuant to the provisions of this chapter, not more than ninety percent of the amount expended for such program, exclusive of the expenditure of funds secured by a community mental health program from federal sources. Where it is determined by the secretary to be necessary for the expansion of existing mental health services or for the development of new mental health services, as described in RCW 71.24.030, and after consultation with the department of revenue regarding the extent to which local funds for the support of mental health services have been exhausted, the state share in any community mental health program may exceed ninety percent of the total expenditures: *Provided*, That the state share shall be reduced to not more than ninety percent of the total expenditures within two years from the starting date of such new services. Reimbursement shall be made on a monthly basis, upon submission to the secretary such information as he may require: *Provided, further*, That when deemed necessary to maintain proper standards of care in the program, within rules and regulations promulgated by the secretary, the counties shall be required to provide up to fifty percent of the total expended for such program through fees, gifts, contributions, and volunteer services. [1971 ex.s. c 204 § 2; 1967 ex.s. c 111 § 15.]

71.24.160 Proof as to uses made of increases in state matching funds. The board or boards of county commissioners shall make satisfactory showing to the director that all increases in state matching funds distributed under the provisions of this chapter shall be used for expansion of existing services or for developing new services, and that such state matching funds shall in no case be used to replace local funds from any source being used to finance mental health services prior to the effective date of this chapter. [1967 ex.s. c 111 § 16.]

71.24.165 Level of state financial support not to be less than amounts paid immediately prior to July 1, 1967. The department of institutions in making payments of state funds in accordance with the provisions of chapter 71.24 RCW, to counties for the support of community mental health programs which were financially supported by the state prior to July 1, 1967 shall pay to the counties not less than the amounts paid by the state to such preexisting programs immediately prior to July 1, 1967: *Provided*, That in the event appropriated funds to the department of institutions for the support of community mental health programs are insufficient to maintain community mental health programs of eligible counties at the same level prevailing during the previous biennium, then the department of institutions shall make

pro rata reductions in the payment of state funds to all counties. [1969 c 61 § 1.]

71.24.190 Department to promulgate rules—Travel expenses for attending conferences. The department shall promulgate rules and regulations to effectuate the purposes of this chapter, the form, manner and time for the submission of proposed plans for approval as submitted by the county commissioners, and the form, manner and time for the submission of claims for state reimbursement. Reimbursement may be made for travel expenses to meetings by members of the community mental health program administrative board, and for travel expenses of supervisors of community mental health services to conferences which may from time to time be called by the director. Such travel expenses may be paid in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 165; 1967 ex.s. c 111 § 19.]

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

71.24.200 Expenditures of county funds subject to county fiscal laws. Expenditures of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1967 ex.s. c 111 § 20.]

71.24.210 Payment by patients for services. Community mental health programs shall require that patients make payment for community mental health services in accordance with their ability to pay, rendered pursuant to a plan submitted to the director, but not in excess of actual cost. [1967 ex.s. c 111 § 21.]

71.24.220 Reimbursement may be withheld for non-compliance with chapter or regulations. The director may withhold state reimbursement in whole or in part for any community mental health program in the event of a failure to comply with the provisions of this chapter or regulations made by the department pursuant thereto relating to the community mental health program or the administration thereof. [1967 ex.s. c 111 § 22.]

71.24.230 Department designated "state mental health authority"—Agreements with federal agencies. The department is designated as the "state mental health authority" and shall be authorized to enter into agreements with any agency of the United States government concerning the mental health program of the state. [1967 ex.s. c 111 § 23.]

71.24.240 County program plans to be approved by director prior to submittal to federal agency. In order to establish eligibility for funding under this chapter, any county or counties seeking to obtain federal funds for the support of any aspect of a community mental health program as defined in this chapter shall submit program plans to the director for prior review and approval before such plans are submitted to any federal agency. [1967 ex.s. c 111 § 24.]

71.24.250 County commissioners may accept and expend gifts and grants. The board or boards of county commissioners are authorized to accept and expend gifts and grants received from private, county, state, and federal sources. [1967 ex.s. c 111 § 25.]

71.24.900 Effective date—1967 ex.s. c 111. This act shall take effect on July 1, 1967. [1967 ex.s. c 111 § 26.]

Chapter 71.28
MENTAL HEALTH AND RETARDATION
SERVICES—INTERSTATE CONTRACTS

Sections

71.28.010 Contracts by boundary counties or cities therein.

71.28.010 Contracts by boundary counties or cities therein. Any county, or city within a county which is situated on the state boundaries is authorized to contract for mental health and/or retardation services with a county situated in either the states of Oregon or Idaho, located on the boundaries of such states with the state of Washington. [1967 c 84 § 1.]

Chapter 71.98
CONSTRUCTION

Sections

71.98.010 Continuation of existing law.
71.98.020 Title, chapter, section headings not part of law.
71.98.030 Invalidity of part of title not to affect remainder.
71.98.040 Repeals and saving.
71.98.050 Emergency—1959 c 25.

71.98.010 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 25 § 71.98.010.]

71.98.020 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 25 § 71.98.020.]

71.98.030 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. [1959 c 25 § 71.98.030.]

71.98.040 Repeals and saving. The following acts or parts of acts are repealed:

- (1) Sections 1 through 7, pages 113 and 114, Laws of 1879;
- (2) Sections 1 through 4, pages 13 and 14, Laws of 1881;
- (3) Sections 1671 through 1677, chapter 113, Code of 1881;
- (4) Sections 1, 6 and 7, pages 32 and 33, Laws of 1883;

- (5) Sections 416 and 417, chapter 249, Laws of 1909;
- (6) Chapter 105, Laws of 1915;
- (7) Chapter 109, Laws of 1915;
- (8) Chapter 145, Laws of 1923;
- (9) Chapter 42, Laws of 1939;
- (10) Chapter 179, Laws of 1947;
- (11) Sections 1 through 19, 21 through 51 and 53 through 69, chapter 198, Laws of 1949;
- (12) Sections 1 through 5, 17 through 39, and 51 through 64, chapter 139, Laws of 1951;
- (13) Chapter 223, Laws of 1951;
- (14) Chapter 24, Laws of 1957;
- (15) Chapter 26, Laws of 1957;
- (16) Chapter 28, Laws of 1957;
- (17) Chapter 35, Laws of 1957;
- (18) Chapter 49, Laws of 1957;
- (19) Chapter 184, 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 25 § 71.98.040.]

71.98.050 Emergency—1959 c 25. 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 25 § 71.98.050.]

TITLE 72

STATE INSTITUTIONS

Chapters

- 72.01 Administration.
- 72.02 Adult corrections.
- 72.04A Probation and parole.
- 72.05 Children and youth services.
- 72.06 Mental health.
- 72.08 State penitentiary.
- 72.12 State reformatory.
- 72.13 Correctional institution for male felons—
Reception and classification center.
- 72.15 Washington correctional institution for women.
- 72.16 Green Hill school.
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- 72.23 Public and private facilities for mentally ill.
- 72.25 Nonresident insane, feeble-minded, sexual psychopaths, and psychopathic delinquents.
- 72.27 Interstate compact on mental health.
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- 72.30 Interlake school.
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- 72.40 State schools for blind and deaf.
- 72.41 Board of trustees—School for the blind.
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- 72.62 Vocational education programs.
- 72.64 Labor and employment of prisoners.
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- 72.66 Furloughs for prisoners.
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- 72.70 Western interstate corrections compact.
- 72.98 Construction.
- 72.99 Bond acts.

Adult vocational rehabilitation and placement: Chapter 28A.10 RCW.

Alcoholism: Chapter 70.96A RCW.

Central stores: RCW 43.19.1921, 43.19.1923.

Child welfare and day-care advisory committee and subcommittee, director member of: RCW 74.32.051, 74.32.053.

County hospitals: Chapter 36.62 RCW.

County jails: Chapter 36.63 RCW.

Director of institutions, membership on mental health and mental retardation advisory council: RCW 71.16.020.

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Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Jurisdiction over Indians concerning mental illness: Chapter 37.12 RCW.

Juvenile courts and juvenile delinquents: Title 13 RCW.

Mental illness—Financial responsibility: Chapter 71.02 RCW.

Mental illness and inebriacy: Title 71 RCW.

Mental retardation facilities and community mental health centers: Chapter 71.16 RCW.

State institutions: State Constitution Art. 13.

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Veterans affairs, powers and duties concerning transferred to department of veterans affairs: RCW 43.60A.020.

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Chapter 72.01 ADMINISTRATION

Sections

- 72.01.005 Department of institutions abolished.
- 72.01.010 Definitions.
- 72.01.042 Hours of labor for full time employees—Compensatory time—Premium pay.
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- 72.01.370 Leaves of absence for inmates—Grounds.
- 72.01.380 Leaves of absence for inmates—Rules—Restrictions—Costs.

- 72.01.410 Transfer of child under sixteen convicted of crime amounting to felony.
- 72.01.420 Jails and detention facilities—Director to inspect, establish standards and procedures, recommend rules, report to legislature, etc.
- 72.01.430 Transfer of equipment, supplies, livestock between institutions—Notice—Conditions.
- 72.01.440 Destruction of files of juveniles committed to department of institutions upon attaining majority—Exceptions.
- 72.01.450 Use of facilities, equipment and personnel by school districts and institutions of higher learning authorized.
- 72.01.452 Use of facilities, equipment and personnel by state agencies, counties, cities or political subdivisions.
- 72.01.454 Use of facilities by community service organizations, non-profit associations, etc.
- 72.01.458 Use of files and records for courses of education, instruction and training at institutions.
- 72.01.460 Lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands.
- 72.01.480 Agreements with nonprofit organizations to provide services for persons admitted or committed to institutions.
- 72.01.490 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure.

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

Counties may engage in probation and parole services: RCW 36.01.070.

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111 and 11.08.120.

Law against discrimination: Chapter 49.60 RCW.

Out-of-state physicians, conditional license to practice in conjunction with institutions: RCW 18.71.095, 18.71.096.

Public employment: Title 41 RCW.

Social security benefits, payment to survivors or department of institutions: RCW 11.66.010.

State administrative departments and agencies: Chapter 43.17 RCW.

State communications advisory committee, director as member: RCW 43.89.020.

Washington commodities to be used: Chapter 39.24 RCW.

72.01.005 Department of institutions abolished. See RCW 43.20A.500.

72.01.010 Definitions. As used in this title:

The word "department" after July 1, 1970 means the department of social and health services;

The word "director" after July 1, 1970 means the secretary of social and health services. [1970 ex.s. c 18 § 56; 1959 c 28 § 72.01.010. Prior: 1907 c 166 § 10; RRS § 10919. Formerly RCW 72.04.010.]

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

72.01.042 Hours of labor for full time employees—Compensatory time—Premium pay. The hours of labor for each full time employee transferred under the provisions of *this 1970 amendatory act from the department of institutions shall be a maximum of eight hours in any work day and forty hours in any work week.

Employees transferred under the provisions of *this 1970 amendatory act from the department of institutions and required to work in excess of the eight-hour maximum per day or the forty-hour maximum per week shall be compensated by not less than equal hours of compensatory time off or, in lieu thereof, a premium rate of pay per hour equal to not less than one-hundred and

seventy-sixth of the employee's gross monthly salary: *Provided*, That in the event that an employee is granted compensatory time off, such time off should be given within the calendar year and in the event that such an arrangement is not possible the employee shall be given a premium rate of pay: *Provided further*, That compensatory time and/or payment thereof shall be allowed only for overtime as is duly authorized and accounted for under rules and regulations established by the director of institutions prior to July 1, 1970 or as the same are hereinafter amended under rules and regulations promulgated hereunder. [1970 ex.s. c 18 § 60; 1953 c 169 § 1. Formerly RCW 43.19.255. Redesignated as RCW 72.01.042 and added to chapter 28, Laws of 1959 and Title 72 RCW by 1965 c 8 § 43.19.255.]

***Reviser's note:** "this 1970 amendatory act", see note following RCW 43.20A.010.

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

72.01.043 Hours of labor for full time employees—Certain personnel excepted. RCW 72.01.042 shall not be applicable to the following designated personnel transferred from the department of institutions under the provisions of *this 1970 amendatory act: Administrative officers of the department; institutional superintendents, medical staff other than nurses, and business managers; and such professional, administrative and supervisory personnel as designated prior to July 1, 1970 by the department of institutions with the concurrence of the merit system board having jurisdiction. [1970 ex.s. c 18 § 61; 1953 c 169 § 2. Formerly RCW 43.19.256. Redesignated as RCW 72.01.043 and added to chapter 28, Laws of 1959 and Title 72 RCW by 1965 c 8 § 43.19.256.]

***Reviser's note:** "this 1970 amendatory act", see note following RCW 43.20A.010.

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

72.01.050 Director's powers and duties—Management of public institutions. The director shall have full power to manage and govern the following public institutions.

The western state hospital, the eastern state hospital, the northern state hospital, the state penitentiary, the state reformatory, the state training school, the state school for girls, the state soldiers' home and colony, the Washington veterans' home, Lakeland Village, the Rainier school, the state school for the deaf, the state school for the blind, the state narcotic farm colony, the Fort Worden school for the care and custody of children and youth and such other institutions as authorized by law, subject only to the limitations contained in laws relating to the management of such institutions. [1959 c 28 § 72.01.050. Prior: 1955 c 195 § 4(1); 1915 c 107 § 1, part; 1907 c 166 § 2, part; 1901 c 119 § 3, part; RRS § 10899, part. Formerly RCW 43.28.020, part.]

Correctional institution for juveniles: Chapter 72.18 RCW.

Correctional institution for male felons—Reception and classification center: Chapter 72.13 RCW.

Fircrest school, Yakima Valley school, established: RCW 72.33.030.

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72.01.060 Superintendents—Appointment—Terms—Salaries—Assistants. It shall be the duty of the director to appoint a chief executive officer for each public institution under his control, who shall devote his entire time to the duties of his office and whose title shall be "superintendent". Said appointment shall be for a term of four years, but the appointee may be removed by the director in his discretion.

No person shall be eligible for appointment as superintendent of a hospital for the mentally ill unless he has had three or more years experience as a practicing physician after receiving his diploma or license.

Except as otherwise provided in this title, the superintendent of each institution may appoint all assistants and employees required for the management of the institution placed in his charge, the number of such assistants and employees to be determined and fixed by the director. The superintendent of any institution may, at his pleasure, discharge any person therein employed. The director shall investigate all complaints made against the superintendent of any institution and also any complaint against any other officer or employee thereof, if it has not been investigated and reported upon by the superintendent.

The director may, after investigation, for good and sufficient reasons, order the discharge of any subordinate officer or employee of an institution.

Each superintendent shall receive such salary as is fixed by the director, who shall also fix the compensation of other officers and the employees of each institution. Such latter compensation shall be fixed on or before the first day of April of each year and no change shall be made in the compensation, so fixed, during the twelve months period commencing April 1st. [1959 c 28 § 72.01.060. Prior: 1907 c 166 § 5; 1901 c 119 § 6; RRS § 10902. Formerly RCW 72.04.020.]

Correctional institution for juveniles, superintendent: RCW 72.18.040.

Correctional institution for male felons—Reception and classification center, superintendent: RCW 72.13.040.

Fort Worden, appointment of superintendent, officers and employees: RCW 72.56.050.

Maple Lane School, appointment of superintendent and subordinate officers and employees: RCW 72.20.020.

State hospitals for mentally ill, superintendents: RCW 72.23.030.

State penitentiary, duties of superintendent: RCW 72.08.040.

State reformatory, appointment of physicians, subordinate officers, guards and employees: RCW 72.12.040.

State residential schools, superintendents' powers and duties: RCW 72.33.040.

State schools for blind and deaf, appointment of superintendent, discharge of employees: RCW 72.40.020.

Washington veterans' home, superintendent: RCW 72.36.020.

72.01.090 Rules and regulations. The department is authorized to make its own rules for the proper execution of its powers. It shall also have the power to adopt rules and regulations for the government of the public institutions placed under its control, and shall therein prescribe, in a manner consistent with the provisions of this title, the duties of the persons connected with the management of such public institutions. [1959 c 28 § 72.01.090. Prior: 1907 c 166 § 7; 1901 c 119 § 9; RRS § 10905. Formerly RCW 72.04.060.]

72.01.100 Building plans and program. The director shall:

(1) Prepare topographic and architectural plans for the state institutions under his control;

(2) Establish a systematic building program providing for the grouping of buildings at the institutions;

(3) Prepare plans, specifications, and estimates of cost for all necessary repairs or betterments to buildings at the institutions, to accompany the estimates for the biennial budget;

(4) Supervise the erection, repair, and betterment of all such buildings. [1959 c 28 § 72.01.100. Prior: 1955 c 195 § 4(3), (4), (5), and (6); 1921 c 7 § 44; RRS § 10802. Formerly RCW 43.28.020, part.]

Reviser's note: For powers and duties of division of engineering and architecture of department of general administration pertaining to subject matter contained in this section, see RCW 43.19.450.

Buildings, earthquake standards: Chapter 70.86 RCW.

72.01.110 Construction or repair of buildings. The department may employ the services of competent architects for the preparation of plans and specifications for new buildings, or for repairs, changes, or additions to buildings already constructed, employ competent persons to superintend the construction of new buildings or repairs, changes, or additions to buildings already constructed and call for bids and award contracts for the erection of new buildings, or for repairs, changes, or additions to buildings already constructed: *Provided*, That the department may proceed with the erecting of any new building, or repairs, changes, or additions to any buildings already constructed, employing thereon the labor of the inmates of the institution, when in its judgment the improvements can be made in as satisfactory a manner and at a less cost to the state by so doing. [1959 c 28 § 72.01.110. Prior: 1901 c 119 § 12; RRS § 10909. Formerly RCW 72.04.100.]

Public works: Chapter 39.04 RCW.

72.01.120 Construction or repair of buildings—Award of contracts. When improvements are to be made under contract, notice of the call for the same shall be published in at least two newspapers of general circulation in the state for two weeks prior to the award being made. The contract shall be awarded to the lowest responsible bidder. The director is authorized to require such security as he may deem proper to accompany the bids submitted, and shall also fix the amount of the bond or other security that shall be furnished by the person or firm to whom the contract is awarded. The director shall have the power to reject any or all bids submitted, if for any reason it is deemed for the best interest of the state to do so, and to readvertise in accordance with the provisions hereof. The director shall also have the power to reject the bid of any person or firm who has had a prior contract, and who did not, in the opinion of the director, faithfully comply with the same. [1959 c 28 § 72.01.120. Prior: 1901 c 119 § 10, part; RRS § 10906.]

72.01.130 Destruction of buildings—Reconstruction. If any of the shops or buildings in which convicts are employed are destroyed in any way, or injured by fire or otherwise, they may be rebuilt or repaired immediately under the direction of the department, by and with the advice and consent of the governor, and the expenses thereof shall be paid out of any unexpended funds appropriated to the department for any purpose,

not to exceed one hundred thousand dollars: *Provided*, That if a specific appropriation for a particular project has been made by the legislature, only such funds exceeding the cost of such project may be expended for the purposes of this section. [1959 c 28 § 72.01.130. Prior: 1957 c 25 § 1; 1891 c 147 § 29; RRS § 10908. Formerly RCW 72.04.090.]

72.01.140 Agricultural and farm economy. The director shall:

(1) Make a survey, investigation, and classification of the lands connected with the state institutions under his control, and determine which thereof are of such character as to be most profitably used for agricultural, horticultural, dairying, and stock raising purposes, taking into consideration the costs of making them ready for cultivation, the character of the soil, its depth and fertility, the number of kinds of crops to which it is adapted, the local climatic conditions, the local annual rainfall, the water supply upon the land or available, the needs of all state institutions for the food products that can be grown or produced, and the amount and character of the available labor of inmates at the several institutions;

(2) Establish and carry on suitable farming operations at the several institutions under his control;

(3) Supply the several institutions with the necessary food products produced thereat;

(4) Exchange with, or furnish to, other institutions, food products at the cost of production;

(5) Sell and dispose of surplus food products produced. [1959 c 28 § 72.01.140. Prior: 1955 c 195 § 4(7), (8), (9), (10) and (11); 1921 c 7 § 39; RRS § 10797. Formerly RCW 43.28.020, part.]

72.01.150 Industrial economy. The director shall:

(1) Establish, install and operate, at the several state institutions under his control, such industries and industrial plants as may be most suitable and beneficial to the inmates thereof, and as can be operated at the least relative cost and the greatest relative benefit to the state, taking into consideration the needs of the state institutions for industrial products, and the amount and character of labor of inmates available at the several institutions;

(2) Supply the several institutions with the necessary industrial products produced thereat;

(3) Exchange with, or furnish to, other state institutions industrial products at prices to be fixed by the department, not to exceed in any case the price of such products in the open market;

(4) Sell and dispose of surplus industrial products produced, to such persons and under such rules, regulations, terms, and prices as may be in his judgment for the best interest of the state;

(5) Sell products of the plate mill to any department, to any state, county, or other public institution and to any governmental agency, of this or any other state under such rules, regulations, terms, and prices as may be in his judgment for the best interests of the state. [1959 c 28 § 72.01.150. Prior: 1955 c 195 § 4(12), (13), (14), (15) and (16); 1923 c 101 § 1; 1921 c 7 § 40; RRS § 10798. Formerly RCW 43.28.020, part.]

Institutional industries commission: Chapter 72.60 RCW.

72.01.160 Deposit of money—Institutional revolving account. The director shall have the power, and it shall be his duty, to cause all moneys or credits received from the sale or exchange of farm or industrial products produced or manufactured at the several institutions under the control of the department to be paid into the state treasury to the credit of a revolving account, to be known as the state institutional revolving account, from which account there shall be biennially appropriated for the benefit of the several institutions under the control of the department sufficient moneys to cover the estimated biennial contribution to such account of each of the said institutions. [1959 c 28 § 72.01.160. Prior: 1921 c 7 § 41; RRS § 10799. Formerly RCW 43.19.170.]

Disposition of receipts for products of penitentiary: RCW 72.08.070.

72.01.170 Health and sanitation. The director shall comply with all requirements of the director of health in relation to health and sanitation at the institutions under his control. [1959 c 28 § 72.01.170. Prior: 1955 c 195 § 4(17); 1921 c 7 § 36, part; RRS § 10794, part. Formerly RCW 43.28.020, part.]

Powers, duties, functions of director of health transferred to secretary of social and health services: RCW 43.20A.120.

72.01.180 Dietitian—Duties—Travel expenses. The director shall have the power to select a member of the faculty of the University of Washington, or the Washington State University, skilled in scientific food analysis and dietetics, to be known as the state dietitian, who shall make and furnish to the department food analyses showing the relative food value, in respect to cost, of food products, and advise the department as to the quantity, comparative cost, and food values, of proper diets for the inmates of the state institutions under the control of the department. The state dietitian shall receive travel expenses while engaged in the performance of his duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 166; 1959 c 28 § 72.01.180. Prior: 1921 c 7 § 32; RRS § 10790. Formerly RCW 43.19.150.]

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

72.01.190 Fire protection. The director may enter into an agreement with a city or town adjacent to any state institution for fire protection for such institution. [1959 c 28 § 72.01.190. Prior: 1947 c 188 § 1; Rem. Supp. 1947 § 10898a. Formerly RCW 72.04.140.]

72.01.200 Employment of teachers. The several penal and reformatory institutions of the state may employ certificated teachers to carry on their educational work and all such teachers so employed shall be eligible to membership in the state teachers' retirement fund. [1959 c 28 § 72.01.200. Prior: 1947 c 211 § 1; Rem. Supp. 1947 § 10319-1. Formerly RCW 72.04.130.]

Educational facilities in youth institutions: RCW 72.05.140. Teachers' retirement: Chapter 41.32 RCW.

72.01.210 Institutional chaplains—Appointment. The director is hereby directed and empowered to appoint chaplains for the state correctional institutions for convicted felons; and chaplains for the correctional institutions for juveniles found delinquent by the juvenile courts, and one chaplain, or more chaplains as may be approved by the director for other custodial, correctional and mental institutions. The chaplains so appointed shall have the qualifications and shall be compensated in an amount, as shall hereafter be recommended by the department and approved by the state personnel board. [1967 c 58 § 1; 1959 c 33 § 1; 1959 c 28 § 72.01.210. Prior: 1955 c 248 § 1. Formerly RCW 72.04.160.]

State personnel board: RCW 50.12.030.

72.01.220 Institutional chaplains—Duties. It shall be the duty of the chaplains at the respective institutions mentioned in RCW 72.01.210, under the direction of the department, to conduct religious services and to give religious and moral instruction to the inmates of the institutions, and to attend to their spiritual wants. They shall counsel with and interview the inmates concerning their social and family problems, and shall give assistance to the inmates and their families in regard to such problems. [1959 c 28 § 72.01.220. Prior: 1955 c 248 § 2. Formerly RCW 72.04.170.]

72.01.230 Institutional chaplains—Offices, chapels, supplies. The chaplains at the respective institutions mentioned in RCW 72.01.210 shall be provided with the offices and chapels at their institutions, and such supplies as may be necessary for the carrying out of their duties. [1959 c 28 § 72.01.230. Prior: 1955 c 248 § 3. Formerly RCW 72.04.180.]

72.01.240 Supervisor of chaplains. The director is hereby empowered to appoint one of the chaplains, authorized by RCW 72.01.210, to act as supervisor of chaplains for the department, in addition to his duties at one of the institutions designated in RCW 72.01.210. [1959 c 28 § 72.01.240. Prior: 1955 c 248 § 4. Formerly RCW 72.04.190.]

72.01.260 Outside ministers not excluded. Nothing contained in RCW 72.01.210 through 72.01.250 shall be so construed as to exclude ministers of any denomination from giving gratuitous religious or moral instruction to prisoners under such reasonable rules and regulations as the director may prescribe. [1959 c 28 § 72.01.260. Prior: 1929 c 59 § 2; Code 1881 § 3297; RRS § 10236-1. Formerly RCW 72.08.210.]

72.01.270 Gifts, acceptance of. The director shall have the power to receive, hold and manage all real and personal property made over to the department by gift, devise or bequest, and the proceeds and increase thereof shall be used for the benefit of the institution for which it is received. [1959 c 28 § 72.01.270. Prior: 1901 c 119 § 8; RRS § 10904. Formerly RCW 72.04.050.]

72.01.280 Quarters for personnel—Charges. The superintendent of each public institution and the assistant physicians, steward, accountant and chief engineer of each hospital for the mentally ill may be furnished with quarters, household furniture, board, fuel, and lights for themselves and their families, and the director may, when in his opinion any public institution would be benefited by so doing, extend this privilege to any officer at any of the public institutions under his control. The words "family" or "families" used in this section shall be construed to mean only the spouse and dependent children of an officer. Employees may be furnished with quarters and board for themselves. The director shall charge and collect from such officers and employees the full cost of the items so furnished, including an appropriate charge for depreciation of capital items. [1959 c 39 § 3; 1959 c 28 § 72.01.280. Prior: 1957 c 188 § 1; 1907 c 166 § 6; 1901 c 119 § 6; RRS § 10903. Formerly RCW 72.04.040.]

72.01.282 Quarters for personnel—Deposit of receipts. All moneys received by the director of institutions from charges made pursuant to RCW 72.01.280 shall be deposited by him in the state general fund. [1959 c 210 § 1.]

72.01.290 Record of patients and inmates. The department shall keep at its office, accessible only to the director and to proper officers and employees, and to other persons authorized by the director, a record showing the residence, sex, age, nativity, occupation, civil condition and date of entrance, or commitment of every person, patient, inmate or convict, in the several public institutions governed by the department, the date of discharge of every person from the institution, and whether such discharge is final: *Provided*, That in addition to this information the superintendents for the hospitals for the mentally ill shall also state the condition of the person at the time of leaving the institution. The record shall also state if the person is transferred from one institution to another and to what institution; and if dead the date and cause of death. This information shall be furnished to the department by the several institutions, and also such other obtainable facts as the department may from time to time require, not later than the fifth day of each month for the month preceding, by the chief executive officer of each public institution, upon blank forms which the department may prescribe. [1959 c 28 § 72.01.290. Prior: 1907 c 166 § 9; 1901 c 119 § 13; RRS § 10910. Formerly RCW 72.04.110.]

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

72.01.300 Accounting systems. The director shall have the power, and it shall be his duty, to install and maintain in the department a proper cost accounting system of accounts for each of the institutions under the control of the department, for the purpose of detecting and avoiding unprofitable expenditures and operations. [1959 c 28 § 72.01.300. Prior: 1921 c 7 § 43; RRS § 10801. Formerly RCW 43.19.160.]

72.01.310 Political influence forbidden. Any officer, including the director, or employee of the department or of the institutions under the control of the department, who, by solicitation or otherwise, exercises his influence, directly or indirectly, to influence other officers or employees of the state to adopt his political views or to favor any particular person or candidate for office, shall be removed from his office or position by the proper authority. [1959 c 28 § 72.01.310. Prior: 1901 c 119 § 15; RRS § 10917. Formerly RCW 72.04.150.]

72.01.320 Biennial reports to legislature and governor—Contents. The director shall examine into the conditions and needs of the several state institutions under his control and on or before the first day of December of the year preceding the session of the legislature report in writing to the governor the condition of each institution and what amount of money he deems advisable to appropriate for its maintenance and betterment, having reference to the probable growth of the institution, its general welfare and the purpose of its creation.

On or before the first Tuesday after the convening of each regular session of the legislature the director shall make to the governor and legislature a full report of the activities of his department, incorporating therein suggestions respecting legislation for the benefit of the several institutions under his control and in the interests of improved administration generally. Such report shall contain the reports made to the director by the executive officer of each institution or so much thereof as in his opinion may be proper. There shall be published in the report a complete list of the officers and employees of the department and the several institutions and the annual salary paid to each. [1959 c 28 § 72.01.320. Prior: 1955 c 195 § 5. (i) 1901 c 119 § 14; RRS § 10915. (ii) 1915 c 107 § 1, part; 1907 c 166 § 2, part; 1901 c 119 § 3, part; RRS § 10899, part. Formerly RCW 43.28.030.] AMO 177

72.01.370 Leaves of absence for inmates—Grounds. The superintendents of the state penitentiary, the state reformatory, the state honor camps and such other penal institutions as may hereafter be established, may, subject to the approval of the director of the department of institutions, grant leaves of absence to inmates confined in such institutions to:

- (1) Go to the bedside of the inmate's wife, husband, child, mother or father, or other member of the inmate's immediate family who is seriously ill;
- (2) Attend the funeral of a member of the inmate's immediate family listed in subsection (1) of this section;
- (3) Participate in athletic contests, and;
- (4) Perform labor in connection with the industrial or agricultural programs of such institutions. [1959 c 40 § 1.]

72.01.380 Leaves of absence for inmates—Rules—Restrictions—Costs. The director of the department of institutions is authorized to make rules and regulations providing for the conditions under which inmates will be granted leaves of absence, and providing

for safeguards to prevent escapes while on leave of absence: *Provided*, That leaves of absence granted to inmates under RCW 72.01.370 shall not allow or permit any inmate to go beyond the boundaries of this state. The director of the department of institutions shall also make rules and regulations requiring the reimbursement of the state from the inmate granted leave of absence, or his family, for the actual costs incurred arising from any leave of absence granted under the authority of RCW 72.01.370, subsections (1) and (2): *Provided further*, That no state funds shall be expended in connection with leaves of absence granted under RCW 72.01.370, subsections (1) and (2), unless such inmate and his immediate family are indigent and without resources sufficient to reimburse the state for the expenses of such leaves of absence. [1959 c 40 § 2.]

72.01.410 Transfer of child under sixteen convicted of crime amounting to felony. Whenever any child under the age of sixteen is convicted in the courts of this state of a crime amounting to a felony, and is committed for a term of confinement in a correctional institution wherein adults are confined, the director of the department of institutions may transfer such child to a juvenile correctional institution under the supervision of the division of children and youth services of the department of institutions, or to such other institution as is now, or may hereafter be authorized by law to receive such child, until such time as the child arrives at the age of eighteen years, whereupon the child shall be returned to the institution of original commitment. Notice of such transfers shall be given to the clerk of the committing court and the parents, guardian, or next of kin of such child, if known. [1959 c 140 § 1.]

Child not to be confined with adult convicts: RCW 13.04.115.

Juvenile courts and juvenile delinquents: Title 13 RCW.

Male juveniles may be transferred to correctional institution: RCW 72.13.070.

Prisoners and incorrigible juvenile delinquents to be received at reformatory: RCW 72.12.050.

72.01.420 Jails and detention facilities—Director to inspect, establish standards and procedures, recommend rules, report to legislature, etc. The director of institutions shall make or cause to be made at least yearly an inspection of all jails and detention facilities, and shall in addition have the following powers and duties:

- (1) To establish recommended procedures concerned with the safekeeping, health, and welfare of all prisoners committed to such jails and other local detention facilities;
- (2) To prescribe minimum standards for the operation of jails and other local detention facilities, including the training of personnel;
- (3) To have authority to recommend the rules and regulations for the control and discipline of the prisoners;
- (4) To make such recommendations to the local sheriff and other officials for the improvement of the jail conditions in such area;

(5) To maintain adequate records of such jails and make annual reports to the legislature. [1961 c 171 § 32.]

City and county jail act of 1974: Chapter 36.63A RCW.

Jails and detention facilities: Chapters 36.63 and 72.64 RCW.

72.01.430 Transfer of equipment, supplies, livestock between institutions—Notice—Conditions. The director of the department of institutions, notwithstanding any provision of law to the contrary, is hereby authorized to transfer equipment, livestock and supplies between the several institutions within the department without reimbursement to the transferring institution excepting, however, any such equipment donated by organizations for the sole use of such transferring institutions. Whenever transfers of capital items are made between institutions of the department, notice thereof shall be given to the director of the department of general administration accompanied by a full description of such items with inventory numbers, if any. [1967 c 23 § 1; 1961 c 193 § 1.]

72.01.440 Destruction of files of juveniles committed to department of institutions upon attaining majority—Exceptions. See RCW 13.04.250.

72.01.450 Use of facilities, equipment and personnel by school districts and institutions of higher learning authorized. The director of institutions of the state of Washington is authorized to enter into agreements with any school district or any institution of higher learning for the use of the facilities, equipment and personnel of any state institution of the department, for the purpose of conducting courses of education, instruction or training in the professions and skills utilized by one or more of the institutions, at such times and under such circumstances and with such terms and conditions as may be deemed appropriate. [1970 ex.s. c 50 § 2; 1967 c 46 § 1.]

72.01.452 Use of facilities, equipment and personnel by state agencies, counties, cities or political subdivisions. The director is authorized to enter into an agreement with any agency of the state, a county, city or political subdivision of the state for the use of the facilities, equipment and personnel of any institution of the department for the purpose of conducting courses of education, instruction or training in any professional skill having a relationship to one or more of the functions or programs of the department. [1970 ex.s. c 50 § 3.]

72.01.454 Use of facilities by community service organizations, nonprofit associations, etc. The director may permit the use of the facilities of any state institution by any community service organization, nonprofit corporation, group or association for the purpose of conducting a program of education, training, entertainment or other purpose, for the residents of such institutions, if determined by the director to be beneficial to such residents or a portion thereof. [1970 ex.s. c 50 § 5.]

72.01.458 Use of files and records for courses of education, instruction and training at institutions. In any course of education, instruction or training conducted in any state institution of the department use may be made of selected files and records of such institution, notwithstanding the provisions of any statute to the contrary. [1970 ex.s. c 50 § 4.]

72.01.460 Lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands. (1) Any lease of public lands with outdoor recreation potential authorized by the department of institutions shall be open and available to the public for compatible recreational use unless the department of institutions determines that the leased land should be closed in order to prevent damage to crops or other land cover, to improvements on the land, to the lessee, or to the general public or is necessary to avoid undue interference with carrying forward a departmental program. Any lessee may file an application with the department of institutions to close the leased land to any public use. The department shall cause written notice of the impending closure to be posted in a conspicuous place in the department's Olympia office, at the principal office of the institution administering the land, and in the office of the county auditor in which the land is located thirty days prior to the public hearing. This notice shall state the parcel or parcels involved and shall indicate the time and place of the public hearing. Upon a determination by the department that posting is not necessary, the lessee shall desist from posting. Upon a determination by the department that posting is necessary, the lessee shall post his leased premises so as to prohibit recreational uses thereon. In the event any such lands are so posted, it shall be unlawful for any person to hunt or fish, or for any person other than the lessee or his immediate family to use any such posted land for recreational purposes.

(2) The department of institutions may insert the provisions of subsection (1) of this section in all leases hereafter issued. [1969 ex.s. c 46 § 2.]

72.01.480 Agreements with nonprofit organizations to provide services for persons admitted or committed to institutions. The director of the department of institutions is authorized to enter into agreements with any nonprofit corporation or association for the purpose of providing and coordinating voluntary and community based services for the treatment or rehabilitation of persons admitted or committed to any institution under the supervision of the department of institutions. [1970 ex.s. c 50 § 1.]

Severability—1970 ex.s. c 50: "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." [1970 ex.s. c 50 § 8.] This applies to RCW 72.01.450–72.01.458, 72.01.480 and 72.40.031.

72.01.490 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure. See RCW 64.08.090.

**Chapter 72.02
ADULT CORRECTIONS**

Sections

- 72.02.005 Division of adult corrections, powers, duties and functions transferred to department of social and health services.
- 72.02.040 Secretary acting for department exercises powers and duties.
- 72.02.100 Earnings, clothing, transportation and subsistence payments upon release of certain prisoners.
- 72.02.110 Weekly payments to certain released prisoners.

72.02.005 Division of adult corrections, powers, duties and functions transferred to department of social and health services. See RCW 43.20A.220.

72.02.040 Secretary acting for department exercises powers and duties. The secretary of social and health services acting for the department shall exercise all powers and perform all duties prescribed by law with respect to the administration of any adult correctional program by the department. [1970 ex.s. c 18 § 57; 1959 c 28 § 72.02.040. Prior: 1957 c 272 § 16. Formerly RCW 43.28.110.]

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

72.02.100 Earnings, clothing, transportation and subsistence payments upon release of certain prisoners. Any person serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, who is thereafter released upon an order of parole of the state board of prison terms and paroles, or who is discharged from custody upon expiration of sentence, or who is ordered discharged from custody by a court of appropriate jurisdiction, shall be entitled to retain his earnings from labor or employment while in confinement and shall be supplied by the superintendent of the state correctional facility with suitable and presentable clothing, the sum of forty dollars for subsistence, and transportation by the least expensive method of public transportation not to exceed the cost of one hundred dollars to his place of residence or the place designated in his parole plan, or to the place from which committed if such person is being discharged on expiration of sentence, or discharged from custody by a court of appropriate jurisdiction: *Provided*, That up to sixty additional dollars may be made available to the parolee for necessary personal and living expenses upon application to and approval by such person's parole officer. If in the opinion of the superintendent suitable arrangements have been made to provide the person to be released with suitable clothing and/or the expenses of transportation, the superintendent may consent to such arrangement. If the superintendent has reasonable cause to believe that the person to be released has ample funds, with the exception of earnings from labor or employment while in confinement, to assume the expenses of clothing, transportation, or the expenses for which payments made pursuant to RCW 72.02.100 or 72.02.110 or any one or more of such expenses, the person released shall be required to assume such expenses. [1971 ex.s. c 171 § 1.]

72.02.110 Weekly payments to certain released prisoners. As state, federal or other funds are available, the secretary of the department of social and health services or his designee is authorized, in his discretion, not to provide the forty dollars subsistence money or the optional sixty dollars to a person or persons released as described in RCW 72.02.100, and instead to utilize the authorization and procedure contained in this section relative to such person or persons.

Any person designated by the secretary serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, who is thereafter released upon an order of parole of the state board of prison terms and paroles, or is discharged from custody upon expiration of sentence, or is ordered discharged from custody by a court of appropriate jurisdiction, shall receive the sum of fifty-five dollars per week for a period of up to six weeks. The initial weekly payment shall be made to such person upon his release or parole by the superintendent of the institution. Subsequent weekly payments shall be made to such person by the probation and parole officer at the office of such probation or parole officer. In addition to the initial six weekly payments provided for in this section, a probation and parole officer and his district supervisor may, at their discretion, continue such payments up to a maximum of twenty additional weeks when they are satisfied that such person is actively seeking employment and that such payments are necessary to continue the efforts of such person to gain employment: *Provided*, That if, at the time of release or parole, in the opinion of the superintendent funds are otherwise available to such person, with the exception of earnings from labor or employment while in confinement, such weekly sums of money or part thereof shall not be provided to such person.

When a person receiving such payments provided for in this section becomes employed, he may continue to receive payments for two weeks after the date he becomes employed but payments made after he becomes employed shall be discontinued as of the date he is first paid for such employment: *Provided*, That no person shall receive payments for a period exceeding the twenty-six week maximum as established in this section.

The secretary of the department of social and health services may annually adjust the amount of weekly payment provided for in this section to reflect changes in the cost of living and the purchasing power of the sum set for the previous year. [1971 ex.s. c 171 § 2.]

**Chapter 72.04A
PROBATION AND PAROLE**

Sections

- 72.04A.050 Transfer of certain powers and duties of board of prison terms and paroles to director.
- 72.04A.060 Transfer of employees.
- 72.04A.065 Transfer of powers, duties and functions of division of probation and parole to department of social and health services.
- 72.04A.070 Plans and recommendations for conditions of supervision of parolees.
- 72.04A.080 Parolees subject to supervision of division—Progress reports.

72.04A.090 Violations of parole or probation—Revision of parole conditions—Rearrest—Detention.

72.04A.100 Transfer of certain property, records, etc., of board of prison terms and paroles to director.

72.04A.110 Transfer of appropriations.

Counties may provide probation and parole services: RCW 36.01.070.

Duties of supervisor as to parole and probation: Chapter 9.95 RCW.

Prison terms and parole board: Chapter 9.95 RCW.

Provisions relating to parole and probation: Chapter 9.95 RCW.

Victims of crimes, reimbursement by convicted person as condition of work release or parole: RCW 7.68.120.

72.04A.050 Transfer of certain powers and duties of board of prison terms and paroles to director. The powers and duties of the state board of prison terms and paroles, relating to (1) the supervision of parolees of any of the state penal institutions, (2) the supervision of persons placed on probation by the courts, and (3) duties with respect to persons conditionally pardoned by the governor, are transferred to the director of institutions who shall hereafter exercise such powers and perform such duties through the division of probation and parole of the department of institutions.

This section shall not be construed as affecting any of the remaining powers and duties of the board of prison terms and paroles including, but not limited to, the following:

(1) The fixing of minimum terms of confinement of convicted persons, or the reconsideration of its determination of minimum terms of confinement;

(2) Determining when and under what conditions a convicted person may be released from custody on parole, and the revocation or suspension of parole or the modification or revision of the conditions of the parole, of any convicted person. [1967 c 134 § 7.]

72.04A.060 Transfer of employees. All employees of the board of prison terms and paroles who are employed in connection with the exercise of the powers and performance of the duties herein transferred to the director of institutions shall, upon July 1, 1967, be transferred to the department of institutions.

All such employees on permanent status shall be certified as employees of the department of institutions on permanent status and all such employees on probationary status shall be certified as employees of the department of institutions on probationary status. All such employees transferred herein shall continue to be governed in accordance with chapter 41.06 RCW, the state civil service law.

The board of prison terms and paroles shall retain in its employ and under its jurisdiction those employees necessary to the performance of its remaining powers and duties and any doubts in this respect shall be resolved by the state personnel board. The board of prison terms and paroles may hire additional employees on a temporary basis or may borrow such employees from other state departments or enter into agreements with other state departments for the pro rata remuneration of employees of other departments whose services are temporarily required by the board. [1967 c 134 § 8.]

72.04A.065 Transfer of powers, duties and functions of division of probation and parole to department of social and health services. See RCW 43.20A.220.

72.04A.070 Plans and recommendations for conditions of supervision of parolees. The director of institutions through the supervisor of the division of probation and parole of the department of institutions shall cause to be prepared plans and recommendations for the conditions of supervision under which each inmate of any state penal institutions who is eligible for parole may be released from custody. Such plans and recommendations shall be submitted to the board of prison terms and paroles which may, at its discretion, approve, reject, or revise or amend such plans and recommendations for the conditions of supervision of release of inmates on parole, and, in addition, the board may stipulate any special conditions of supervision to be carried out by a probation and parole officer. [1967 c 134 § 9.]

72.04A.080 Parolees subject to supervision of division—Progress reports. Each inmate hereafter released on parole shall be subject to the supervision of the division of probation and parole of the department of institutions, and the probation and parole officers of the division shall be charged with the preparation of progress reports of parolees and to give guidance and supervision to such parolees within the conditions of a parolee's release from custody. Copies of all progress reports prepared by the probation and parole officers shall be supplied to the board of prison terms and paroles for their files and records. [1967 c 134 § 10.]

72.04A.090 Violations of parole or probation—Revision of parole conditions—Rearrest—Detention. Whenever a parolee breaches a condition or conditions under which he was granted parole, or violates any law of the state or rules and regulations of the board of prison terms and paroles, any probation and parole officer may arrest, or cause the arrest and suspension of parole of, such parolee without a warrant, pending a determination by the board. The facts and circumstances of such conduct of the parolee shall be reported by the probation and parole officer, with recommendations, to the board of prison terms and paroles, who may order the revocation or suspension of parole, revise or modify the conditions of parole or take such other action as may be deemed appropriate in accordance with RCW 9.95-.120. The board of prison terms and paroles, after consultation with the director of the department of institutions, shall make all rules and regulations concerning procedural matters, which shall include the time when state probation and parole officers shall file with the board reports required by this section, procedures pertaining thereto and the filing of such information as may be necessary to enable the board of prison terms and paroles to perform its functions under this section.

The probation and parole officers shall have like authority and power regarding the arrest and detention of a probationer who has breached a condition or conditions under which he was granted probation by the

superior court, or violates any law of the state, pending a determination by the superior court.

In the event a probation and parole officer shall arrest or cause the arrest and suspension of parole of a parolee or probationer in accordance with the provisions of this section, such parolee or probationer shall be confined and detained in the county jail of the county in which the parolee or probationer was taken into custody, and the sheriff of such county shall receive and keep in the county jail, where room is available, all prisoners delivered thereto by the probation and parole officer, and such parolees shall not be released from custody on bail or personal recognizance, except upon approval of the board of prison terms and paroles and the issuance by the board of an order of reinstatement on parole on the same or modified conditions of parole. [1969 c 98 § 1; 1967 c 134 § 11.]

Severability—Effective date—1969 c 98: See notes following RCW 9.95.003.

Suspension, revision of parole, retaking of violator, powers and duties of parole and probation officers, etc.: RCW 9.95.120.

72.04A.100 Transfer of certain property, records, etc., of board of prison terms and paroles to director. Upon July 1, 1967, the board of prison terms and paroles shall deliver to the director of institutions all books, documents, records, papers and other writings which have been made, and all cabinets, files, furniture, office equipment, motor vehicles, and other tangible property used or held in the exercise of the powers and performance of the duties which, by RCW 9.95.170, 9.95.200, 9.95.210, 9.95.250, 9.95.260, 72.01.030 and chapter 72.04A RCW, are transferred to the director of institutions. If, however, such books, documents, records, papers and other writings are essential as determined by the board of prison terms and paroles to the performance of duties retained by the board, it may deliver copies of such books, documents, records, papers and other writings to the director of institutions.

The board of prison terms and paroles shall retain all books, documents, records, papers and other writings, and all cabinets, files, furniture, office equipment, motor vehicles, and other tangible property used or held in the exercise of the powers and performance of the duties which are not, by RCW 9.95.170, 9.95.200, 9.95.210, 9.95.250, 9.95.260, 72.01.030 and chapter 72.04A RCW, transferred to the director of institutions. [1967 c 134 § 12.]

72.04A.110 Transfer of appropriations. Any appropriation made to the board of prison terms and paroles for the purpose of carrying out the powers and duties transferred by RCW 9.95.170, 9.95.200, 9.95.210, 9.95.250, 9.95.260, 72.01.030 and chapter 72.04A RCW to the director of institutions shall be transferred and credited to the department of institutions for the purpose of carrying out such transferred powers and duties. [1967 c 134 § 18.]

Chapter 72.05 CHILDREN AND YOUTH SERVICES

Sections	
72.05.010	Declaration of purpose.
72.05.020	Definitions.
72.05.045	Division of children and youth services, powers, duties and functions transferred to department of social and health services.
72.05.130	Powers and duties of division—In general—"Close security" institutions designated.
72.05.140	Educational facilities in youth institutions.
72.05.150	"Minimum security" institutions—Establishment—"Forest camp revolving fund" created.
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72.05.154	Juvenile forest camps—Industrial insurance—Eligibility for benefits—Exceptions.
72.05.160	Contracts with other divisions, agencies authorized.
72.05.170	Counseling and consultative services.
72.05.200	Parental right to provide treatment preserved.
72.05.210	Juvenile court law—Applicability—Synonymous terms.
72.05.300	Parental schools—Leases, purchases—Powers of school district.
72.05.310	Parental schools—Personnel.

Comic books: Chapter 19.18 RCW.
Employment of personnel: RCW 72.01.061–72.01.067.
Financial responsibility for cost of detention of minor: RCW 13.16.085.
Handicapped children, parental responsibility, order of commitment: Chapter 26.40 RCW.
Prisoners and incorrigible juvenile delinquents to be received at reformatory: RCW 72.12.050.
Transfer of child under sixteen convicted of crime amounting to felony: RCW 72.01.410.
Transfer of juvenile from correctional institution to state hospital: RCW 72.01.390, 72.01.400.
Uniform interstate compact on juveniles: Chapter 13.24 RCW.

72.05.010 Declaration of purpose. The purposes of RCW 72.05.010 through 72.05.210 are: To provide for every child with behaviour problems, defective and feeble-minded person, and deaf and blind children, within the purview of RCW 72.05.010 through 72.05.210, such care, guidance and instruction, control and treatment as will best serve the welfare of the child or person and society; to insure nonpolitical and qualified operation, supervision, management, and control of the Green Hill school, the Maple Lane school, Lakeland Village, Rainier school, the state school for the blind, and the state school for the deaf, and to place them under the division of children and youth services in the department of institutions; and to provide for the persons committed or admitted to those schools that type of care, instruction, and treatment most likely to accomplish their rehabilitation and restoration to normal citizenship. [1959 c 28 § 72.05.010. Prior: 1951 c 234 § 1.]

72.05.020 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Council" means the state council for children and youth.

(2) "Division" after July 1, 1970 means the department of social and health services.

(3) "Department" after July 1, 1970 means the department of social and health services. [1970 ex.s. c 18 § 58; 1959 c 28 § 72.05.020. Prior: 1951 c 234 § 2. Formerly RCW 43.19.260.]

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

72.05.045 Division of children and youth services, powers, duties and functions transferred to department of social and health services. See RCW 43.20A.220.

72.05.130 Powers and duties of division—In general—"Close security" institutions designated. The division of children and youth services shall establish, maintain, operate and administer a comprehensive program for the custody, care, education, treatment, instruction, guidance, control and rehabilitation of all persons who may be committed or admitted to institutions, schools, or other facilities controlled and operated by the division and in order to accomplish these purposes, the powers and duties of the supervisor of the division of children and youth services shall include the following:

(1) The assembling, analyzing, tabulating, and reproduction in report form, of statistics and other data with respect to children with behavior problems in the state of Washington, including, but not limited to, the extent, kind, and causes of such behavior problems in the different areas and population centers of the state. Such reports shall not be open to public inspection, but shall be open to the inspection of the director, supervisor, governor, council, and to the superior court judges of the state of Washington.

(2) The establishment and supervision of diagnostic facilities and services in connection with the custody, care, and treatment of defective, feeble-minded, and behavior problem children who may be committed or admitted to any of the institutions, schools, or facilities controlled and operated by the division, or who may be referred for such diagnosis and treatment by any superior court of this state. Such diagnostic services may be established in connection with, or apart from, any other state institution under the supervision and direction of the director. Such diagnostic services shall be available to the superior courts of the state for persons referred for such services by them prior to commitment, or admission to, any school, institution, or other facility. Such diagnostic services shall also be available to other departments of the state.

(3) The supervision of all persons committed or admitted to any institution, school, or other facility operated by the division, and the transfer of such persons from any such institution, school, or facility to any other such school, institution, or facility: *Provided*, That where a person has been committed to a minimum security institution, school, or facility by any of the superior courts of this state, a transfer to a close security institution shall be made only with the consent and approval of such court. This shall not apply to the state school for the deaf or the state school for the blind.

(4) The supervision of parole, discharge, or other release, and the post-institutional placement of all persons committed to Green Hill school and Maple Lane

school, or such as may be assigned, paroled, or transferred therefrom to other facilities operated by the division. Green Hill school and Maple Lane school are hereby designated as "close security" institutions to which shall be given the custody of children with the most serious behavior problems. [1959 c 28 § 72.05.130. Prior: 1951 c 234 § 13. Formerly RCW 43.19.370.]

72.05.140 Educational facilities in youth institutions. The division of children and youth services, in order to provide educational facilities for persons admitted or committed to any of the institutions, schools or facilities herein provided, is authorized either to:

(1) Enter into an agreement with the local school district within which the institution is situated or with any other local school district conveniently located in the region, or

(2) Provide a comprehensive school program in connection with any institution as if that institution were itself a local school system.

In the event that either option is exercised, all teachers shall meet all certification requirements and the program shall conform to the usual standards defined by law or by regulations of the state board of education or the office of the state superintendent of public instruction and/or other recognized national certifying agencies. [1959 c 28 § 72.05.140. Prior: 1951 c 134 § 14. Formerly RCW 43.19.380.]

Employment of teachers: RCW 72.01.200.

Public schools: Titles 28A and 28B RCW.

72.05.150 "Minimum security" institutions—Establishment—"Forest camp revolving fund" created. The department, through the division, shall have power to acquire, establish, maintain, and operate "minimum security" facilities for the care, custody, education, and treatment of children with less serious behavior problems. Such facilities may include parental schools or homes, farm units, and forest camps. Admission to such minimum security facilities shall be by juvenile court commitment or by transfer as herein otherwise provided. In carrying out the purposes of this section, the department may establish or acquire the use of such facilities by gift, purchase, lease, contract, or other arrangement with existing public entities, and to that end the director may execute necessary leases, contracts, or other agreements. In establishing forest camps, the department may contract with other divisions of the state and the federal government; including, but not limited to, the state division of forestry, the state parks and recreation commission, the U.S. forest service, and the national park service, on a basis whereby such camps may be made as nearly as possible self-sustaining. Under any such arrangement the contracting agency shall reimburse the department for the value of services which may be rendered by the inmates of a camp and all such reimbursements shall be credited to a "forest camp revolving fund", which fund is hereby created, and out of which funds may be disbursed towards the cost of operation and maintenance of the camp. [1959 c 28 § 72.05.150. Prior: 1951 c 234 § 15. Formerly RCW 43.19.390.]

72.05.152 Juvenile forest camps—Industrial insurance benefits prohibited—Exceptions. No inmate of a juvenile forest camp who is affected by this chapter or receives benefits pursuant to RCW 72.05.152 and 72.05.154 shall be considered as an employee or to be employed by the state or the department of social and health services or the department of natural resources, nor shall any such inmate, except those provided for in RCW 72.05.154, come within any of the provisions of the workmen's compensation act, or be entitled to any benefits thereunder, whether on behalf of himself or any other person. All moneys paid to inmates shall be considered a gratuity. [1973 c 68 § 1.]

Effective date—1973 c 68: "This 1973 act shall take effect on July 1, 1973." [1973 c 68 § 3.] This applies to RCW 72.05.152 and 72.05.154.

72.05.154 Juvenile forest camps—Industrial insurance—Eligibility for benefits—Exceptions. From and after July 1, 1973, any inmate working in a juvenile forest camp established and operated pursuant to RCW 72.05.150, pursuant to an agreement between the department of social and health services and the department of natural resources shall be eligible for the benefits provided by Title 51 RCW, as now or hereafter amended, relating to industrial insurance, with the exceptions provided by this section.

No inmate as described in RCW 72.05.152, until released upon an order of parole by the department of social and health services, or discharged from custody upon expiration of sentence, or discharged from custody by order of a court of appropriate jurisdiction, or his dependents or beneficiaries, shall be entitled to any payment for temporary disability or permanent total disability as provided for in RCW 51.32.090 or 51.32.060 respectively, as now or hereafter amended, or to the benefits of chapter 51.36 RCW relating to medical aid: *Provided*, That RCW 72.05.152 and 72.05.154 shall not affect the eligibility, payment or distribution of benefits for any industrial injury to the inmate which occurred prior to his existing commitment to the department of social and health services.

Any and all premiums or assessments as may arise under this section pursuant to the provisions of Title 51 RCW shall be the obligation of and be paid by the state department of natural resources. [1973 c 68 § 2.]

72.05.160 Contracts with other divisions, agencies authorized. In carrying out the provisions of RCW 72.05.010 through 72.05.210, the department, through the division, shall have power to contract with other divisions or departments of the state or its political subdivisions, with any agency of the federal government, or with any private social agency. [1959 c 28 § 72.05.160. Prior: 1951 c 234 § 16. Formerly RCW 43.19.400.]

72.05.170 Counseling and consultative services. The division may provide professional counseling services to delinquent and maladjusted children and their parents, consultative services to communities dealing with problems of children and youth, and may give assistance to law enforcement agencies by means of juvenile control

officers who may be selected from the field of police work. [1959 c 28 § 72.05.170. Prior: 1955 c 240 § 1. Formerly RCW 43.19.405.]

72.05.200 Parental right to provide treatment preserved. Nothing in RCW 72.05.010 through 72.05.210 shall be construed as limiting the right of a parent, guardian or person standing in loco parentis in providing any medical or other remedial treatment recognized or permitted under the laws of this state. [1959 c 28 § 72.05.200. Prior: 1951 c 234 § 19. Formerly RCW 43.19.410.]

72.05.210 Juvenile court law—Applicability—Synonymous terms. RCW 72.05.010 through 72.05.210 shall be construed in connection with and supplemental to the juvenile court law as embraced in chapter 13.04 RCW. Process, procedure, probation by the court prior to commitment, and commitment shall be as provided therein. The terms "delinquency", "delinquent" and "delinquent children" as used and applied in the juvenile court law and the terms "behavior problems" and "children with behavior problems" as used in RCW 72.05.010 through 72.05.210 are synonymous and interchangeable. [1959 c 28 § 72.05.210. Prior: 1951 c 234 § 20. Formerly RCW 43.19.420.]

72.05.300 Parental schools—Leases, purchases—Powers of school district. The department, through the division, may execute leases, with options to purchase, of parental school facilities now or hereafter owned and operated by school districts, and such leases with options to purchase shall include such terms and conditions as the director of institutions deems reasonable and necessary to acquire such facilities. Notwithstanding any provisions of the law to the contrary, the board of directors of each school district now or hereafter owning and operating parental school facilities may, without submission for approval to the voters of the school district, execute leases, with options to purchase, of such parental school facilities, and such leases with options to purchase shall include such terms and conditions as the board of directors deems reasonable and necessary to dispose of such facilities in a manner beneficial to the school district. The department, through the division, if it enters into a lease, with an option to purchase, of parental school facilities, may exercise its option and purchase such parental school facilities; and a school district may, if it enters into a lease, with an option to purchase, of parental school facilities, upon exercise of the option to purchase by the department, sell such parental school facilities and such sale may be accomplished without first obtaining a vote of approval from the electorate of the school district. [1959 c 28 § 72.05.300. Prior: 1957 c 297 § 2. Formerly RCW 43.28.160.]

State parks and recreation commission may acquire parental school facilities from school districts: RCW 43.51.230.

72.05.310 Parental schools—Personnel. The department, through the division, may employ personnel, including but not limited to, superintendents and all

other officers, agents, and teachers necessary to the operation of parental schools. [1959 c 28 § 72.05.310. Prior: 1957 c 297 § 3. Formerly RCW 43.28.170.]

Chapter 72.06 MENTAL HEALTH

Sections

- 72.06.010 Department defined for chapter purposes.
72.06.015 Division of mental health, powers, duties, and functions transferred to department of social and health services.
72.06.050 Mental health—Dissemination of information and advice by department.
72.06.060 Mental health—Psychiatric outpatient clinics.
72.06.070 Mental health—Cooperation of department and state hospitals with local programs.

Alcoholism program: Chapter 70.96A RCW.

Mental illness and inebriacy: Title 71 RCW.

State hospitals for the mentally ill: Chapter 72.23 RCW.

72.06.010 Department defined for chapter purposes. "Department" for the purposes of this chapter shall mean the department of social and health services. [1970 ex.s. c 18 § 59; 1959 c 28 § 72.06.010. Prior: 1957 c 272 § 9. Formerly RCW 43.28.040.]

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

72.06.015 Division of mental health, powers, duties, and functions transferred to department of social and health services. See RCW 43.20A.220.

72.06.050 Mental health—Dissemination of information and advice by department. The department shall cooperate with other departments of state government and its political subdivisions in the following manner:

(1) By disseminating educational information relating to the prevention, diagnosis and treatment of mental illness, mental disorders or mental deficiency.

(2) Upon request therefor, by advising public officers, organizations and agencies interested in the mental health of the people of the state. [1959 c 28 § 72.06.050. Prior: 1955 c 136 § 2. Formerly RCW 43.28.600.]

72.06.060 Mental health—Psychiatric outpatient clinics. The department is hereby authorized to establish and maintain psychiatric outpatient clinics at such of the several state mental institutions as the director shall designate for the prevention, diagnosis and treatment of mental illnesses, deficiencies or disorders, and the services of such clinics shall be available to any citizen of the state in need thereof, when determined by a physician that such services are not otherwise available, subject to the rules of the department. [1959 c 28 § 72.06.060. Prior: 1955 c 136 § 3. Formerly RCW 43.28.610.]

72.06.070 Mental health—Cooperation of department and state hospitals with local programs. The department and the several state hospitals for the mentally ill shall cooperate with local mental health programs by providing necessary information, recommendations relating to proper after care for patients paroled or discharged from such institutions and

shall also supply the services of psychiatrists, psychologists and other persons specialized in mental illness as they are available. [1959 c 28 § 72.06.070. Prior: 1955 c 136 § 4. Formerly RCW 43.28.620.]

Chapter 72.08 STATE PENITENTIARY

Sections

- 72.08.010 What constitutes penitentiary.
72.08.020 Visitation.
72.08.040 Duties of superintendent.
72.08.045 Temporary rules.
72.08.050 Employment of intemperate person prohibited.
72.08.070 Disposition of moneys.
72.08.080 Control of revenues.
72.08.090 Fiscal reports to auditor.
72.08.101 Corrective, rehabilitative and reformatory programs and procedures.
72.08.102 Rules and regulations for administration, supervision, security and disciplinary measures.
72.08.103 Prisoners' funds and property—Superintendent as custodian—Disposition.
72.08.120 Rules and regulations.
72.08.130 Water supply—Buildings.
72.08.160 Interest in contract or purchase forbidden.
72.08.170 Rewards.
72.08.380 Letters of inmates may be withheld.
72.08.390 Leaves of absence for inmates.

Civil rights, restoration: Chapter 9.96 RCW.

Commitment and executions: Chapter 10.70 RCW.

Control and treatment of venereal diseases: Chapter 70.24 RCW.

Convict labor, contract system barred: State Constitution Art. 2 § 29.

Convict-made goods: Chapter 19.20 RCW.

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Fugitives of this state: Chapter 10.34 RCW.

Infected prisoners, removal: RCW 70.20.140.

Officers and guards as peace officers: RCW 9.94.050.

Pardon, governor's powers and duties: RCW 10.01.120 and 43.06.020.

Prison riot: RCW 9.94.010.

Prison terms, paroles and probation: Chapter 9.95 RCW.

Prisoners, state penal institutions: Chapter 9.94 RCW.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

Solitary confinement: RCW 10.64.060.

72.08.010 What constitutes penitentiary. The entire area of lands situated near the city of Walla Walla, donated to the territory of Washington for penitentiary purposes by the people of Walla Walla, and all lands acquired thereafter, together with all structures, buildings and inclosures thereon, are hereby declared to be, and they shall hereafter be known as, the state penitentiary. [1959 c 28 § 72.08.010. Prior: 1891 c 147 § 1; 1886 p 152 § 1; 1883 p 82 § 3; 1869 p 359 § 3; 1861 p 5 § 1; 1855 p 9 § 1; RRS § 10210.]

72.08.020 Visitation. It shall be the duty of the director to have an officer of the department visit the penitentiary once in each month and oftener if necessary. [1959 c 28 § 72.08.020. Prior: 1891 c 147 § 5; RRS § 10211.]

72.08.040 Duties of superintendent. It shall be the duty of the superintendent of the penitentiary:

(1) Under the order and direction of the department to prosecute all suits at law or in equity that may be necessary to protect the rights of the state in matters or property connected with the penitentiary and its management, such suits to be prosecuted by the attorney general, in the name of the department.

(2) To supervise the government, discipline and police of the penitentiary, and to enforce all orders and regulations of the department in respect to the penitentiary. He shall keep a registry of the convicts, in which shall be entered the names of each convict, the crime for which he is convicted, the period of his sentence, from what county sentenced, by what court sentenced, his nativity, to what degree educated, an accurate description of his person, and whether he has previously been confined in a prison in this or any other state, and if so where, and how he was discharged.

(3) To perform such other duties as may be prescribed by the department. [1969 c 56 § 1; 1959 c 28 § 72.08.040. Prior: 1891 c 147 § 7; 1888 p 169 §§ 8, 9; RRS § 10213.]

Records for vital statistics: RCW 70.58.270.

Superintendent, general provisions: RCW 72.01.060.

72.08.045 Temporary rules. When in his opinion an emergency exists, the superintendent may promulgate temporary rules for the governance of the penitentiary, which shall remain in effect until terminated by the director. [1959 c 28 § 72.08.045. Prior: 1891 c 147 § 5, part; RRS § 10211, part. Formerly RCW 72.08.020, part.]

72.08.050 Employment of intemperate person prohibited. No person shall be appointed to any office or be employed in the penitentiary on behalf of the state who is in the habit of intemperate use of liquors, and a single act of intemperance shall justify his discharge or removal. [1959 c 28 § 72.08.050. Prior: 1891 c 147 § 10; RRS § 10216.]

72.08.070 Disposition of moneys. All moneys received or collected by the superintendent, unless otherwise provided, from sales of industrial or agricultural products of the state penitentiary or for services in relation to the industrial and agricultural operations of the penitentiary shall be paid by him into the state treasury to the credit of the state institutional revolving account. [1959 c 28 § 72.08.070. Prior: 1957 c 115 § 5; 1891 c 147 § 15; RRS § 10218.]

Deposit of money: RCW 72.01.160.

Institutional industries revolving fund: RCW 72.60.240.

72.08.080 Control of revenues. All revenues of the penitentiary, unless herein otherwise provided, shall be paid to the superintendent who alone is authorized to receipt for the same and discharge from liability. When any sum of money is paid to the superintendent he shall cause the same to be properly entered on the books. [1959 c 28 § 72.08.080. Prior: 1891 c 147 § 16; RRS § 10219.]

72.08.090 Fiscal reports to auditor. On payment of any moneys into the state treasury, the superintendent and state treasurer shall report to the auditor of state the amount so paid, and the state treasurer shall give the superintendent a receipt therefor, which receipt shall be filed with the auditor. [1959 c 28 § 72.08.090. Prior: 1891 c 147 § 17; RRS § 10220.]

72.08.101 Corrective, rehabilitative and reformatory programs and procedures. The director of institutions shall provide for the establishment of programs and procedures for convicted persons at the state penitentiary, which are designed to be corrective, rehabilitative and reformatory of the undesirable behavior problems of such persons, as distinguished from programs and procedures essentially penal in nature. [1965 ex.s. c 9 § 3.]

72.08.102 Rules and regulations for administration, supervision, security and disciplinary measures. The director of institutions is authorized to make rules and regulations for the administration, supervision, security and disciplinary measures inflicted upon convicted persons at the state penitentiary. [1965 ex.s. c 9 § 4.]

72.08.103 Prisoners' funds and property—Superintendent as custodian—Disposition. The superintendent shall be custodian of all funds and valuable personal property of a convicted person as shall be in his possession upon admission to the state penitentiary, or which shall be sent or brought to such person, or earned by him while in custody, or which shall be forwarded to the superintendent on behalf of a convicted person. All such funds shall be deposited in the personal account of the convicted person and the superintendent shall have authority to disburse moneys from such person's personal account for the personal and incidental needs of the convicted person as may be deemed reasonably necessary. When a convicted person is released from the confines of the state penitentiary either on parole or discharge, all funds and valuable personal property in the possession of the superintendent belonging to such convicted person shall be delivered to him. [1965 ex.s. c 9 § 5.]

72.08.120 Rules and regulations. The director shall have power to make rules and regulations for the discipline, employment, instruction, education and compensation of prisoners in the Washington state penitentiary. [1959 c 28 § 72.08.120. Prior: 1927 c 305 § 2; RRS § 10223-2.]

72.08.130 Water supply—Buildings. The director shall have power to contract for the supply of water for said penitentiary, upon such terms as he shall deem to be for the best interests of the state, or furnish water themselves, at their option. The department shall have full power to erect any building or structure deemed necessary, or to alter or improve the same, and to pay for the same from the fund appropriated for the use or support of the penitentiary, or from the earnings thereof, without advertising or contracting therefor: *Provided*, That no buildings or structure, the cost of which will

exceed three thousand dollars, shall be erected or constructed without first obtaining the consent of the governor: *Provided further*, That such expenditure shall in no instance exceed ten thousand dollars without a special appropriation therefor by the state legislature. [1959 c 28 § 72.08.130. Prior: 1891 c 147 § 21; RRS § 10225.]

72.08.160 Interest in contract or purchase forbidden. No officer or employee of the penitentiary shall be interested, directly or indirectly, in any contract or purchase made or authorized to be made by anyone for or on behalf of the penitentiary. [1959 c 28 § 72.08.160. Prior: 1891 c 147 § 24; RRS § 10228.]

Misconduct of public officers: Chapter 42.20 RCW.

72.08.170 Rewards. The secretary of the department of social and health services or his designee shall have power to offer rewards not exceeding two hundred dollars, in the one case for the return of escaped convicts, and to pay the expenses of the apprehension, safekeeping and return of all escaped convicts by the officers of the penitentiary. He shall certify the amount of reward allowed and expenses incurred and prepare a voucher for the amount found due out of any funds available therefor. [1973 c 106 § 32; 1959 c 28 § 72.08.170. Prior: 1891 c 147 § 27; RRS § 10231.]

Offer of rewards by governor: RCW 43.06.010(8).

72.08.380 Letters of inmates may be withheld. Whenever the superintendent of the state penitentiary withholds from mailing letters written by inmates of such institution, the superintendent shall forward such letters to the director of institutions for study and the inmate shall be forthwith notified that such letter has been withheld from mailing and the reason for so doing. Letters forwarded to the director for study shall either be mailed within seven days to the addressee or, if deemed objectionable by the director, retained in a separate file for two years and then destroyed. [1959 c 28 § 72.08.380. Prior: 1957 c 61 § 1.]

72.08.390 Leaves of absence for inmates. See RCW 72.01.370, 72.01.380.

Chapter 72.12 STATE REFORMATORY

Sections

72.12.010	Management.
72.12.020	Control vested in department.
72.12.040	Subordinate officers—Personnel.
72.12.050	Prisoners and incorrigible juvenile delinquents to be received at reformatory.
72.12.070	Rules and regulations.
72.12.090	Business management.
72.12.100	Director's duty—Register of prisoners.
72.12.140	Letters of inmates may be withheld.
72.12.150	Leaves of absence for inmates.

Appointment of superintendent: RCW 72.01.060.

Civil rights, restoration: Chapter 9.96 RCW.

Commitment to: RCW 9.92.050.

Control and treatment of venereal diseases: Chapter 70.24 RCW.

Convict labor, contract system barred: State Constitution Art. 2 § 29.

Convict-made goods: Chapter 19.20 RCW.

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Fugitives of this state: Chapter 10.34 RCW.

Infected prisoners, removal: RCW 70.20.140.

Officers and guards as peace officers: RCW 9.94.050.

Pardon, governor's powers and duties: RCW 10.01.120 and 43.06.020.

Prison riot: RCW 9.94.010.

Prison terms, paroles and probation: Chapter 9.95 RCW.

Prisoners, state penal institutions: Chapter 9.94 RCW.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

Solitary confinement: RCW 10.64.060.

72.12.010 Management. The Washington state reformatory heretofore established and located at Monroe in Snohomish county shall be equipped and managed in the manner and for the purpose in this chapter hereinafter provided. [1959 c 28 § 72.12.010. Prior: 1927 c 212 § 1; 1907 c 167 § 1; RRS § 10280-1.]

72.12.020 Control vested in department. The government and control of the Washington state reformatory and of the prisoners sentenced thereto shall be vested in the director of institutions. [1959 c 28 § 72.12.020. Prior: 1927 c 212 § 2; 1907 c 167 § 3; RRS § 10280-2.]

Appointment of superintendent: RCW 72.01.060.

72.12.040 Subordinate officers—Personnel. The superintendent, by and with the advice and consent of the director, shall appoint the physicians, and such subordinate officers, guards and employees as the number of prisoners or the needs of the institution may from time to time require. [1959 c 28 § 72.12.040. Prior: 1927 c 212 § 4; RRS § 10280-4.]

Appointment of personnel: RCW 72.01.060.

72.12.050 Prisoners and incorrigible juvenile delinquents to be received at reformatory. The director, through the superintendent of the reformatory shall receive all males between the ages of sixteen and thirty years who are sentenced to the reformatory on conviction of any criminal offense in any court having jurisdiction thereof; and all male prisoners who may be removed from any other penal institution of the state as provided by law, and such persons over the age of sixteen years who may be placed at the reformatory at the direction of the supervisor of the division of children and youth services with the approval of the department of institutions, in accordance with RCW 13.08.190, as amended. All such persons shall be subject to the rules and regulations of the reformatory and the laws relating to the administration of such institution to the same extent as the other inmates of such institution. [1959 c 251 § 1; 1959 c 28 § 72.12.050. Prior: 1955 c 242 § 1; 1927 c 212 § 5; RRS § 10280-5.]

Child not to be confined with adult convicts: RCW 13.04.115.

Commitment to state reformatory: RCW 9.92.050.

Transfer of incorrigible juveniles: RCW 13.04.200.

Transfer of juveniles: RCW 72.01.390-72.01.410.

72.12.070 Rules and regulations. The director shall have power to make rules and regulations for the discipline, employment, instruction, education and removal of prisoners in the reformatory. The discipline imposed shall be reformatory in character. [1959 c 28 § 72.12.070. Prior: 1927 c 212 § 8; 1907 c 167 § 17; RRS § 10280-8.]

72.12.090 Business management. The business management, sale of products and manufactures, and the auditing and keeping of accounts pertaining thereto shall be vested in the director under such regulations as may be prescribed by the director of budget. [1959 c 28 § 72.12.090. Prior: 1927 c 212 § 13; 1907 c 167 § 19; RRS § 10280-13.]

72.12.100 Director's duty—Register of prisoners. It shall be the duty of the director to maintain such control over prisoners committed to the reformatory as shall prevent them from committing crime, best secure their self-support, and accomplish their reformation. When any prisoner shall be received into the reformatory under sentence thereto, the director shall cause to be entered in a register the date of such admission, the name, age, nativity and nationality, with such facts as can be ascertained of parentage, or early education and social influences as seem to indicate the constitutional defects and social tendencies of the prisoner and the best probable plan of treatment. In such register shall be entered quarterly, or oftener, minutes of observed improvement or deterioration of character affecting the standing or situation of such prisoner, the circumstances of the final release, and any subsequent facts of the personal history which may be brought to the knowledge of the director or superintendent. [1959 c 28 § 72.12.100. Prior: 1927 c 212 § 14; RRS § 10280-14. Formerly RCW 72.12.100 and 72.12.110.]

Records for vital statistics: RCW 70.58.270.

72.12.140 Letters of inmates may be withheld. Whenever the superintendent of the state reformatory withholds from mailing letters written by inmates of such institution, the superintendent shall forward such letters to the director of institutions for study and the inmate shall be forthwith notified that such letter has been withheld from mailing and the reason for so doing. Letters forwarded to the director for study shall either be mailed within seven days to the addressee or, if deemed objectionable by the director, retained in a separate file for two years and then destroyed. [1959 c 28 § 72.12.140. Prior: 1957 c 61 § 1.]

72.12.150 Leaves of absence for inmates. See RCW 72.01.370, 72.01.380.

Chapter 72.13 CORRECTIONAL INSTITUTION FOR MALE FELONS—RECEPTION AND CLASSIFICATION CENTER

Sections	
72.13.010	Institution established—Location—Design—Preliminary plans.
72.13.020	Acquisition of land.
72.13.030	Contract for construction.
72.13.040	Superintendent—Appointment—Qualifications.
72.13.050	Associate superintendents.
72.13.060	Personnel subject to merit system.
72.13.070	Male juveniles may be transferred to institution.
72.13.080	Powers and duties of superintendent.
72.13.090	Prisoner's living arrangements.
72.13.100	Industrial, vocational and agricultural programs.
72.13.110	Reception and classification center.
72.13.120	Sentence—Commitment to reception center—Effective when facilities ready.
72.13.130	Powers of court or judge not impaired.
72.13.140	Reception center staff, board—Certificate of recommended treatment—Cooperation by other state agencies.
72.13.150	Persons to be received for classification and placement.
72.13.160	Director to determine placement—What laws govern confinement, parole and discharge.
72.13.170	Rules and regulations.
72.13.180	Leaves of absence for inmates.

72.13.010 Institution established—Location—Design—Preliminary plans. There is hereby established under the supervision and control of the director of the department of institutions a correctional institution for the confinement and rehabilitation of male persons convicted of a felony and such other persons transferred to such institution as hereinafter provided. Such institution shall be situated upon lands within the state, to be selected by the director of institutions under conditions as herein provided. Such institution shall be designed to be of an expandable type, enabling complete construction of the institution over an extended period. The director shall cause preliminary plans, specifications and estimates of cost to be made and for this purpose may retain architectural and engineering services. [1959 c 214 § 1.]

72.13.020 Acquisition of land. The director is hereby authorized to acquire by gift, purchase or condemnation a suitable tract or parcel of land of not more than four hundred acres as a site for a correctional institution, and for that purpose may enter into contracts to purchase and to take title to real property in the name of the state of Washington. Prior to entering into any contract for the purchase of land, or acquiring such land, by eminent domain, the director shall give preference to any and all offers to donate land by any person or persons, federal agencies, or any political subdivisions of the state. The director may accept or reject any and all offers for the donation of land when in his discretion such land is not suitable for the purposes and objects of such institution, or is remotely located in such degree as would be disadvantageous, in view of the needs and purposes of such institutions. [1959 c 214 § 2.]

72.13.030 Contract for construction. When title to the land selected by the director, as provided in this chapter, has vested in the state the director shall, upon

the completion of plans and specifications for such institution, publish a call for bids, as provided by law, and enter into a contract for the construction of such institution: *Provided*, That no contract shall be entered into for the construction of such institution until such time as an appropriation for that purpose has been made by the legislature. [1959 c 214 § 3.]

Building plans and program: RCW 72.01.100.

Construction of buildings—Award of contracts: RCW 72.01.110, 72.01.120.

72.13.040 Superintendent—Appointment—Qualifications. The superintendent of the correctional institution established by this chapter shall be appointed by the director. The superintendent shall have such administrative experience and possess such qualifications as shall be fixed by the personnel board, or such merit system board as shall be established by law having jurisdiction of personnel within the department of institutions, with the advice and approval of the director. [1959 c 214 § 4.]

Jurisdiction of personnel board: RCW 72.01.061–72.01.067.

Superintendents—Appointment—Terms—Salaries—Assistants: RCW 72.01.060.

72.13.050 Associate superintendents. The superintendents, subject to the approval of the director, shall appoint such associate superintendents as shall be deemed necessary. In the event the superintendent shall be absent from the institution, or during periods of illness or other situations incapacitating the superintendent from properly performing his duties, he shall appoint one of the officers of the institution to act as superintendent during such period of absence, illness or incapacity, subject to the approval of the director. [1959 c 214 § 5.]

72.13.060 Personnel subject to merit system. The superintendent and all subordinate officers and employees of such institution shall be under the jurisdiction of the state personnel board or such merit system board as shall be hereafter established by law having jurisdiction within the department of institutions. [1959 c 214 § 6.]

Jurisdiction of state personnel board: RCW 72.01.061–72.01.067.

72.13.070 Male juveniles may be transferred to institution. The supervisor of the division of children and youth services of the department of institutions, upon the approval of the director, shall have authority to transfer to the correctional institution male juvenile delinquents or male juveniles convicted of a crime, who may hereafter be committed to the division of children and youth services, or who are now confined at facilities under the division of children and youth services for the custody of juvenile delinquents: *Provided*, That such juveniles shall not be retained in such institution after eighteen years of age: *Provided further*, That the supervisor of the division of children and youth services shall retain custody of such juveniles for the purpose of returning, in his discretion, such juveniles to the transferring institution or such other facilities of the division as he shall deem appropriate. [1959 c 214 § 7.]

Prisoners and incorrigible juvenile delinquents to be received at reformatory: RCW 72.12.050.

Transfer of child under sixteen convicted of crime amounting to felony: RCW 72.01.410.

Transfer of incorrigible juveniles: RCW 13.04.200.

72.13.080 Powers and duties of superintendent. The superintendent shall have the following powers, duties and responsibilities:

(1) Subject to the rules and regulations of the department, the superintendent shall have supervision and management of the institution, the grounds and buildings, subordinate officers and employees, and the prisoners committed or transferred to such institution and the custody of such persons until released as provided by law.

(2) Subject to the approval of the director, appoint all subordinate officers and employees, who shall be removable from employment by the superintendent, subject to the merit system rules of the state personnel board as may be established by law having jurisdiction of the officers and employees of the department of institutions.

(3) The superintendent shall be the custodian of the personal property of all inmates in the institution and shall make rules and regulations governing the accounting and disposition of all moneys received and earned by the inmates, not inconsistent with law, and subject to the approval of the director. [1959 c 214 § 8.]

72.13.090 Prisoner's living arrangements. Each prisoner in the correctional institution shall be provided with a single cell: *Provided, however*, That multiple type living arrangements may be provided in forestry or other labor camps maintained in conjunction with the institution. [1959 c 214 § 9.]

72.13.100 Industrial, vocational and agricultural programs. The superintendent, subject to the approval of the director and the institutional industries commission, shall be authorized to establish such industrial, vocational and agricultural programs as will be most beneficial to the inmates of such institution. [1959 c 214 § 10.]

Institutional industries commission: Chapter 72.60 RCW.

72.13.110 Reception and classification center. There shall be a department in such institution known as the reception and classification center under the supervision of an associate superintendent which, subject to the rules and regulations of the department, shall be charged with the function of receiving and classifying all male persons committed or transferred to the institution, taking into consideration age, type of crime for which committed, physical condition, behavior, attitude and prospects for reformation for the purposes of confinement and treatment of male offenders convicted of offenses punishable by imprisonment in the state penitentiary or state reformatory, except offenders convicted of crime and sentenced to death. [1959 c 214 § 11.]

72.13.120 Sentence—Commitment to reception center—Effective when facilities ready. Any male offender convicted of an offense punishable by imprisonment in the state penitentiary or the state reformatory,

except an offender sentenced to death, shall, notwithstanding any inconsistent provision of law, be sentenced to imprisonment in a penal institution under the jurisdiction of the department of institutions without designating the name of such institution, and be committed to the reception center for classification, confinement and placement in such correctional facility under the supervision of the department of institutions as the director of institutions shall deem appropriate: *Provided*, That the provisions of this section shall become effective upon the certification of the director of institutions to the superior courts and prosecuting attorneys of each county and the chief justice of the supreme court that facilities and personnel for the implementation of commitments as above provided are ready to receive persons committed under the provisions of this section. [1959 c 214 § 12.]

72.13.130 Powers of court or judge not impaired. Nothing herein contained, however, shall be construed to restrict or impair the power of any court or judge having jurisdiction to pronounce sentence upon a person to whom this act applies, to fix the term of imprisonment and to order his commitment, according to law, nor to deny the right of any such court or judge to sentence to imprisonment; nor to deny the right of any such court or judge to suspend sentence or the execution of judgment thereon or to make any other disposition of the case pursuant to law; but in case the punishment imposed be imprisonment in the state penitentiary or the state reformatory, the warrant of commitment shall commit the person convicted to the reception center established by this act for classification, confinement and placement as provided by this chapter. [1959 c 214 § 13.]

72.13.140 Reception center staff, board—Certificate of recommended treatment—Cooperation by other state agencies. The director shall appoint a staff for the reception center to interview, test, classify, and supervise offenders committed to the center. Such staff shall consist of such employees as the director shall determine to be adequate for prompt and effective classification. There shall be within the reception center a classification board, which should be composed of such members of the staff of the reception center as the director may require. After making a study and investigation of the facts of the cases of the persons committed to the reception center as the director may require, the board shall make and file in the department a certificate in writing, recommending the state correctional institution best suited to receive the offender during the term of his confinement, the type of program to be followed and the approximate length of such treatment. The state board of prison terms and paroles and other state agencies shall cooperate with the department in obtaining necessary investigative materials concerning offenders committed to the reception center and supply the reception center with necessary information regarding social histories and community background. [1959 c 214 § 14.]

Board of prison terms and paroles: Chapter 9.95 RCW.

72.13.150 Persons to be received for classification and placement. The superintendent of the correctional

institution established by this chapter shall receive all male persons convicted of a felony by the superior court and committed by the superior court to the reception center for classification and placement in such facility as the director shall designate, and all persons transferred thereto by the director from the state reformatory and state penitentiary, and other correctional facilities of the department. The superintendent shall only receive prisoners for classification and study in the institution upon presentation of certified copies of a judgment, sentence and order of commitment of the superior court, along with other reports as may have been made in reference to each individual prisoner. [1959 c 214 § 15.]

72.13.160 Director to determine placement—What laws govern confinement, parole and discharge. The director shall determine the state correctional institution in which the offender shall be confined during his term of imprisonment. The confinement of any offender shall be governed by the laws applicable to the institution to which he is certified for confinement, but his parole and discharge shall be governed by the laws applicable to the sentence imposed by the court. [1959 c 214 § 16.]

72.13.170 Rules and regulations. The director may make, amend and repeal rules consistent with and in furtherance of the provisions of this chapter. [1959 c 214 § 17.]

72.13.180 Leaves of absence for inmates. See RCW 72.01.370, 72.01.380.

Chapter 72.15 WASHINGTON CORRECTIONAL INSTITUTION FOR WOMEN

Sections	
72.15.010	Institution established—Name.
72.15.020	Superintendent—Appointment—Qualifications.
72.15.030	Associate superintendents.
72.15.040	Powers and duties of superintendent.
72.15.050	Industrial, vocational and agricultural programs.
72.15.060	Commitment of convicted female persons—Procedure as to death sentences.
72.15.070	Rules and regulations.

72.15.010 Institution established—Name. There is hereby established under the supervision and control of the director of the department of institutions, a correctional institution for the confinement, rehabilitation and reformation of female persons convicted of a felony and sentenced and committed to such institution for a term of confinement by the superior courts. Such institution shall be known as the Washington correctional institution for women. [1967 ex.s. c 122 § 1.]

Acquisition of land: "The director of institutions is authorized and directed to designate and select suitable lands as a site for the Washington correctional institution for women, which may be acquired either by gift, purchase or condemnation. Prior to any contract for the purchase of real property, or acquiring such real property by condemnation, the director shall give preference to any and all offers to donate real property by any person or persons, federal agencies, or any political subdivision of the state. The director may accept or reject any and all offers for the donation of real property when, in his discretion, such

land is deemed not suitable for the purposes and objects of such institution." [1967 ex.s. c 122 § 2.]

Contract for construction: "When title to the land selected by the director for the Washington correctional institution for women, has vested in the state, the director shall, upon the completion of architectural plans and specifications for such institution, publish a call for bids for the construction of such institution as provided by law and enter into a contract for the construction of such institution." [1967 ex.s. c 122 § 3.]

Site selection commission: "There is hereby established a site selection commission which is authorized and directed to designate a suitable site and/or facility for the location of the state correctional institution for women. The members of the site selection commission shall be composed of the director of institutions, director of central budget agency who shall serve in advisory capacity, and six additional members, three of which shall be appointed by the president of the senate from the senate membership and three by the speaker of the house from the membership of the house of representatives, not more than two members from either the senate or the house of representatives to be of the same political party. The members of the commission, as soon as may be convenient after their appointment, shall elect one of their number to serve as chairman. The site selection commission shall make a report of its designation of such site in writing and file such report on or before September 1, 1967, with the secretary of the senate, the clerk of the house of representatives and the director of institutions.

As reimbursement for their expenses incurred while serving as members of the site selection commission, the legislative members thereof shall be entitled to the allowances provided in RCW 44.04.120, to be vouchered by them and paid from whichever of the department of institution's appropriations as the director of institutions shall deem most appropriate." [1967 ex.s. c 122 § 13.]

72.15.020 Superintendent—Appointment—Qualifications. The superintendent of the Washington correctional institution for women shall be appointed by the director, and shall have such administrative and correctional experience and possess such qualifications as shall be determined by the state personnel board, subject to advice and approval of the director. [1967 ex.s. c 122 § 4.]

72.15.030 Associate superintendents. The superintendent, subject to the approval of the director, shall appoint such associate superintendents as shall be deemed necessary, who shall have such qualifications as shall be determined by the state personnel board subject to the advice and approval of the director. In the event the superintendent shall be absent from the institution, or during periods of illness or other situations incapacitating the superintendent from properly performing his duties, one of the associate superintendents of such institution as may be designated by the director shall act as superintendent during such period of absence, illness or incapacity. [1967 ex.s. c 122 § 5.]

72.15.040 Powers and duties of superintendent. The superintendent shall have the following powers and duties:

(1) Subject to the rules and regulations of the department, the superintendent shall be responsible for the supervision and management of the institution, the grounds and buildings, the subordinate officers and employees, and the prisoners committed, admitted or transferred to such institution and the custody of such persons until released or transferred as provided by law.

(2) Subject to the rules and regulations of the department and the state personnel board, to appoint all subordinate officers and employees.

(3) The superintendent shall be the custodian of all funds and valuable personal property of a convicted person as may be in her possession upon admission to the institution, or which shall be sent or brought to such person, or earned by her while in custody, or which shall be forwarded to the superintendent on behalf of a convicted person. All such funds shall be deposited in the personal account of the convicted person and the superintendent shall have authority to disburse moneys from such person's personal account for the personal and incidental needs of the convicted person as may be deemed reasonably necessary. When a convicted person is released from the confines of the institution either on parole, transfer, or discharge, all funds and valuable personal property in the possession of the superintendent belonging to such convicted person shall be delivered to her. [1967 ex.s. c 122 § 6.]

72.15.050 Industrial, vocational and agricultural programs. The superintendent, subject to the approval of the director and the institutional industries commission, shall be authorized to establish such industrial, vocational and agricultural programs as would be most beneficial to the inmates of such institution. [1967 ex.s. c 122 § 7.]

72.15.060 Commitment of convicted female persons—Procedure as to death sentences. All female persons convicted in the superior courts of a felony and sentenced to a term of confinement, shall be committed to the Washington correctional institution for women. Female persons sentenced to death shall be committed to the Washington correctional institution for women, notwithstanding the provisions of RCW 10.70.060, except that the death warrant shall provide for the execution of such death sentence at the Washington state penitentiary as provided by RCW 10.70.050, and the secretary of social and health services shall transfer to the Washington state penitentiary any female offender sentenced to death not later than seventy-two hours prior to the date fixed in the death warrant for the execution of the death sentence. The provisions of this section shall not become effective until the secretary of social and health services certifies to the chief justice of the supreme court, the chief judge of each division of the court of appeals, the superior courts and the prosecuting attorney of each county that the facilities and personnel for the implementation of commitments are ready to receive persons committed to the Washington correctional institution for women under the provisions of this section. [1971 c 81 § 134; 1967 ex.s. c 122 § 8.]

72.15.070 Rules and regulations. The supervisor of the division of adult corrections and the superintendent, subject to the approval of the director, shall make, amend, and repeal rules and regulations for the administration, supervision, discipline, and security of the Washington correctional institution for women. [1967 ex.s. c 122 § 9.]

**Chapter 72.16
GREEN HILL SCHOOL**

Sections

- 72.16.010 School established.
72.16.020 Purpose of school.
72.16.070 Curriculum.
72.16.090 Reports.

Commitment: Chapter 13.04 RCW.

Control and treatment of venereal diseases: Chapter 70.24 RCW.

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Financial responsibility for cost of detention of minor: RCW 13.16.085.

Fugitives of this state: Chapter 10.34 RCW.

Infected prisoners, removal: RCW 70.20.140.

Juvenile courts: Chapter 13.04 RCW.

Male juveniles may be transferred to correctional institution: RCW 72.13.070.

Officers and guards as peace officers: RCW 9.94.050.

Prisoners, state penal institutions: Chapter 9.94 RCW.

Prisoners and incorrigible juvenile delinquents to be received at reformatory: RCW 72.12.050, 13.08.190.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

Transfer of child under sixteen convicted of crime amounting to felony: RCW 72.01.410.

Transfer of juvenile from correctional institution to state hospital: RCW 72.01.390, 72.01.400.

72.16.010 School established. There is established at Chehalis, Lewis county, an institution which shall be known as the Green Hill school. [1959 c 28 § 72.16.010. Prior: 1955 c 230 § 1. (i) 1909 c 97 p 256 § 1; RRS § 4624. (ii) 1907 c 90 § 1; 1890 p 271 § 1; RRS § 10299.]

72.16.020 Purpose of school. The said school shall be for the keeping and training of all boys between the ages of eight and eighteen years who are residents of the state of Washington and who are lawfully committed to said institution. [1959 c 28 § 72.16.020. Prior: (i) 1909 c 97 p 256 § 2; RRS § 4625. (ii) 1890 p 272 § 2; RRS § 10300.]

72.16.070 Curriculum. All branches taught in at least the first eight grades of the public schools shall be taught in the Green Hill school. The inmates shall be taught and trained in morality, temperance, frugality, and they shall also be instructed in the different trades and callings insofar as possible, within the scope of the institution. [1959 c 28 § 72.16.070. Prior: 1909 c 97 p 257 § 7; RRS § 4630.]

72.16.090 Reports. The superintendent shall, at the close of each year, make a full and complete report to the department, of the condition, number and standing of the inmates of the school, as well as the number received and the number dismissed during the year, and he shall give such further information as the department may require. [1959 c 28 § 72.16.090. Prior: 1890 p 276 § 21; RRS § 10308.]

**Chapter 72.18
CORRECTIONAL INSTITUTION FOR JUVENILES**

Sections

- 72.18.010 Institution established—Location—Preliminary plans.
72.18.020 Acquisition of land.
72.18.030 Contract for construction.
72.18.040 Superintendent—Appointment—Qualifications.
72.18.050 Associate superintendents.
72.18.060 Personnel subject to merit system.
72.18.070 Powers and duties of superintendent.
72.18.080 Rules and regulations.

Child not to be confined with adult convicts: RCW 13.04.115.

Commitment to state reformatory: RCW 9.92.050.

Male juveniles may be transferred to correctional institution: RCW 72.13.070.

Reformatory—Incorrigible juvenile delinquents: RCW 13.04.200, 72.12.050.

Transfer of child under sixteen convicted of crime amounting to felony: RCW 72.01.410.

Transfer of juvenile from correctional institution to state hospital: RCW 72.01.390, 72.01.400.

72.18.010 Institution established—Location—Preliminary plans. There is hereby established under the supervision and control of the director of the department of institutions a correctional institution for the reception, diagnosis, confinement and rehabilitation of juveniles committed by the juvenile courts to the department of institutions, division of children and youth services. Such institution shall be situated upon lands within the state, to be selected by the director of institutions under conditions as herein provided. The director shall cause preliminary plans, specifications and estimates of cost for the construction of such institution to be made and for this purpose may retain architectural and engineering services. [1959 c 277 § 1.]

72.18.020 Acquisition of land. The director is hereby authorized to acquire by gift, purchase or condemnation a suitable tract or parcel of real property as a site for a juvenile correctional institution, and for that purpose may enter into contracts to purchase and to take title to real property in the name of the state. Prior to entering into any contract for the purchase of real property, or acquiring such real property by eminent domain, the director shall give preference to any and all offers to donate real property by any person or persons, federal agencies, or any political subdivisions of the state. The director may accept or reject any and all offers for the donation of real property when in his discretion such land is not suitable for the purposes and objects of such institution, or is remotely located in such degree as would be disadvantageous, in view of the needs and purposes of such institution. [1959 c 277 § 2.]

72.18.030 Contract for construction. When title to the land selected by the director, as provided in this chapter, has vested in the state, the director shall, upon the completion of plans and specifications for such institution, publish a call for bids, as provided by law, and enter into a contract for the construction of such institution: *Provided*, That no contract shall be entered into for the construction of such institution until such time as an

appropriation for that purpose has been made by the legislature. [1959 c 277 § 3.]

Building plans and program: RCW 72.01.100.

Construction of buildings—Award of contracts: RCW 72.01.110, 72.01.120.

72.18.040 Superintendent—Appointment—Qualifications. The superintendent of the correctional institution established by this chapter shall be appointed by the director. The superintendent shall have such administrative experience and possess such qualifications as shall be fixed by the personnel board, or such merit system board as shall be established by law having jurisdiction of personnel within the department of institutions, with the advice and approval of the director. [1959 c 277 § 4.]

Superintendents—Appointment—Terms—Salaries—Assistants: RCW 72.01.060.

72.18.050 Associate superintendents. The superintendent, subject to the approval of the director, shall appoint such associate superintendents as shall be deemed necessary. In the event the superintendent shall be absent from the institution, or during periods of illness or other situations incapacitating the superintendent from properly performing his duties, he shall appoint one of the officers of the institution to act as superintendent during such period of absence, illness or incapacity, subject to the approval of the director. [1959 c 277 § 5.]

72.18.060 Personnel subject to merit system. The superintendent and all subordinate officers and employees of such institution shall be under the jurisdiction of the state personnel board or such merit system board as shall be hereafter established by law having jurisdiction within the department of institutions. [1959 c 277 § 6.]

72.18.070 Powers and duties of superintendent. The superintendent shall have the following powers, duties and responsibilities:

(1) Subject to the rules and regulations of the department, the superintendent shall have supervision and management of the institution, of the grounds and buildings, subordinate officers and employees, and of the juveniles received at such institution and the custody of such persons until released or transferred as provided by law.

(2) Subject to the approval of the director, appoint all subordinate officers and employees, who shall be removable from employment by the superintendent, subject to the merit system rules of the state personnel board as may be established by law having jurisdiction of the officers and employees of the department of institutions.

(3) The superintendent shall be the custodian of the personal property of all juveniles in the institution and shall make rules and regulations governing the accounting and disposition of all moneys received by such juveniles, not inconsistent with law, and subject to the approval of the director. [1959 c 277 § 7.]

72.18.080 Rules and regulations. The director may make, amend and repeal rules and regulations for the

administration of the juvenile correctional institution established by this act in furtherance of the provisions of this chapter and not inconsistent with law. [1959 c 277 § 8.]

**Chapter 72.19
JUVENILE CORRECTIONAL INSTITUTION IN
KING COUNTY**

Sections	
72.19.010	Institution established—Location—Preliminary plans.
72.19.020	Rules and regulations.
72.19.030	Superintendent—Appointment—Qualifications.
72.19.040	Associate superintendents—Appointment—Acting superintendent.
72.19.050	Powers and duties of superintendent.
72.19.060	Male, female, juveniles—Residential housing, separation—Correctional programs, separation, combination.
72.19.070	General obligation bond issue to provide buildings—Authorized—Form, terms, etc.
72.19.100	General obligation bond issue to provide buildings—Juvenile correctional institution building bond redemption fund—Payment from and prior charge on retail sales tax.
72.19.110	General obligation bond issue to provide buildings—Legislature may provide additional means of revenue.
72.19.120	General obligation bond issue to provide buildings—Bonds legal investment for state and municipal corporation funds.
72.19.130	Referral to electorate.

72.19.010 Institution established—Location—Preliminary plans. There is hereby established under the supervision and control of the director of institutions a correctional institution for the confinement and rehabilitation of juveniles committed by the juvenile courts to the department of institutions. Such institution shall be situated upon publicly owned lands within King county, under the supervision of the department of natural resources, which land is located in the vicinity of Echo Lake and more particularly situated in Section 34, Township 24 North, Range 7 East W.M. and that portion of Section 3, Township 23 North, Range 7 East W.M. lying north of U.S. Highway 10, together with necessary access routes thereto, all of which tract is leased by the department of natural resources to the department of institutions for the establishment and construction of the correctional institution authorized and provided for in this chapter. The director shall cause preliminary plans, specifications and estimates of cost for the construction of such institution to be made and for this purpose may retain architectural and engineering services. [1963 c 165 § 1; 1961 c 183 § 1.]

Acquisition of land: "As a site for the juvenile correctional institution, the director is hereby authorized to use any suitable tract or parcel of real property which is: (1) Publicly owned and/or (2) acquired by gift. And for that purpose the director may enter into contracts to take title to real property in the name of the state. The director may accept or reject any and all offers for the donation of real property when in his discretion such land is not suitable for the purposes and objects of such institution, or is remotely located in such degree as would be disadvantageous, in view of the needs and purposes of such institution. In the event that the director determines that any offers for the donation of real property are not desirable, as herein provided, as a site for the juvenile correctional institution, then the director may acquire real property for such site by purchase or condemnation proceedings." [1961 c 183 § 2.]

Contract for construction: "When the land selected by the director, the description of which is more particularly set forth in RCW 72.19.010, has been acquired by the department of institutions by virtue of the lease referred to in said RCW 72.19.010, the director shall, upon the completion of plans and specifications for such institution, publish a call for bids, as provided by law, and enter into a contract for the construction of such institution." [1963 c 165 § 2; 1961 c 183 § 3.]

Site advisory commission: "There is hereby established a site advisory commission to be composed of six members, to aid and assist the director of institutions in the selection of a suitable site for the location of the juvenile correctional institution herein authorized, the members to serve until the site be acquired. The members of the site advisory commission shall be composed of three members of the state house of representatives to be appointed by the speaker, and three members of the state senate to be appointed by the president of the senate. The members of the commission, as soon as may be convenient after their appointment, shall elect one of their members to serve as chairman. Each member shall receive twenty dollars per diem for each day spent in the performance of the duties of the commission and mileage at the rate of ten cents per mile." [1961 c 183 § 5.]

Replacement of Luther Burbank and Martha Washington schools—Transfer of children: "The juvenile correctional institution established by this chapter shall replace the facilities of the Luther Burbank school for boys and the Martha Washington school for girls, both of which are presently being leased from the Seattle public school system by the department of institutions, and upon the expiration of the leases of both properties or other termination thereof, the children located at such schools shall be transferred to the correctional institution established hereunder. In the event the correctional institution has not been completely constructed at the expiration or termination of said leases, the director is authorized to transfer such children to other facilities deemed adequate or otherwise enter into agreements to retain the children in the leased facilities until such completion." [1963 c 165 § 6.]

72.19.020 Rules and regulations. The director may make, amend and repeal rules and regulations for the administration of the juvenile correctional institution established by this act in furtherance of the provisions of this chapter and not inconsistent with law. [1961 c 183 § 4.]

72.19.030 Superintendent—Appointment—Qualifications. The superintendent of the correctional institution established by this chapter shall be appointed by the director. The superintendent shall have such administrative and correctional experience and possess such qualifications as shall be determined by the state personnel board subject to the advice and approval of the director. [1963 c 165 § 3.]

72.19.040 Associate superintendents—Appointment—Acting superintendent. The superintendent, subject to the approval of the director, shall appoint such associate superintendents as shall be deemed necessary. In the event the superintendent shall be absent from the institution, or during periods of illness or other situations incapacitating the superintendent from properly performing his duties, one of the associate superintendents of such institution shall act as superintendent during such period of absence, illness or incapacity as may be designated by the director. [1963 c 165 § 4.]

72.19.050 Powers and duties of superintendent. The superintendent shall have the following powers, duties and responsibilities:

(1) Subject to the rules and regulations of the department, the superintendent shall have the supervision and management of the institution, of the grounds and

buildings, the subordinate officers and employees, and of the juveniles received at such institution and the custody of such persons until released or transferred as provided by law.

(2) Subject to the rules and regulations of the department and the state personnel board, appoint all subordinate officers and employees.

(3) The superintendent shall be the custodian of the personal property of all juveniles in the institution and shall make rules and regulations governing the accounting and disposition of all moneys received by such juveniles, not inconsistent with the law, and subject to the approval of the director. [1963 c 165 § 5.]

72.19.060 Male, female, juveniles—Residential housing, separation—Correctional programs, separation, combination. The plans and construction of the juvenile correctional institution established by this chapter shall provide for adequate separation of the residential housing of the male juvenile from the female juvenile. In all other respects, the juvenile correctional programs for both boys and girls may be combined or separated as the director deems most reasonable and effective to accomplish the reformation, training and rehabilitation of the juvenile offender, realizing all possible economies from the lack of necessity for duplication of facilities. [1963 c 165 § 7.]

72.19.070 General obligation bond issue to provide buildings—Authorized—Form, terms, etc. For the purpose of providing needful buildings at the correctional institution for the confinement and rehabilitation of juveniles situated in King county in the vicinity of Echo Lake which institution was established by the provisions of this chapter, the state finance committee is hereby authorized to issue, at any time prior to January 1, 1970, general obligation bonds of the state of Washington in the sum of four million six hundred thousand dollars, or so much thereof as shall be required to finance the program above set forth, to be paid and discharged within twenty years of the date of issuance.

The state finance committee is authorized to prescribe the form of such bonds, and the time of sale of all or any portion or portions of such bonds, and the conditions of sale and issuance thereof: *Provided*, That none of the bonds herein authorized shall be sold for less than the par value thereof, nor shall they bear interest at a rate in excess of four percent per annum.

The bonds shall pledge the full faith and credit of the state of Washington and contain an unconditional promise to pay the principal and interest when due. The committee may provide that the bonds, or any of them, may be called prior to the due date thereof under such terms and conditions as it may determine. The state finance committee may authorize the use of facsimile signatures in the issuance of the bonds. [1963 ex.s. c 27 § 1.]

72.19.100 General obligation bond issue to provide buildings—Juvenile correctional institution building bond redemption fund—Payment from and prior charge on retail sales tax. The juvenile correctional

institution building bond redemption fund is hereby created in the state treasury, which fund shall be exclusively devoted to the payment of interest on and retirement of the bonds authorized by RCW 72.19.070 through 72.19.130. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet bond retirement and interest requirements and the state treasurer shall thereupon deposit such amount in said juvenile correctional institution building bond redemption fund from moneys transmitted to the state treasurer by the department of revenue and certified by the department of revenue to be sales tax collections and such amount certified by the state finance committee to the state treasurer shall be a prior charge against all retail sales tax revenues of the state of Washington, except that portion thereof heretofore pledged for the payment of bond principal and interest.

The owner and holder of each of said bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require and compel the transfer and payment of funds as directed herein. [1975 1st ex.s. c 278 § 35; 1963 ex.s. c 27 § 4.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

72.19.110 General obligation bond issue to provide buildings—Legislature may provide additional means of revenue. The legislature may provide additional means for raising moneys for the payment of the interest and principal of the bonds authorized herein and RCW 72.19.070 through 72.19.130 shall not be deemed to provide an exclusive method for such payment. [1963 ex.s. c 27 § 5.]

72.19.120 General obligation bond issue to provide buildings—Bonds legal investment for state and municipal corporation funds. The bonds herein authorized shall be a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1963 ex.s. c 27 § 6.]

72.19.130 Referral to electorate. This act shall be submitted to the people for their adoption and ratification, or rejection, at the general election to be held in this state on the Tuesday next succeeding the first Monday in November, 1964, in accordance with the provisions of section 3, Article VIII of the state Constitution; and in accordance with the provisions of section 1, Article II of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof. [1963 ex.s. c 27 § 7.]

Reviser's note: (1) "This act" consists of RCW 72.19.070 through 72.19.120.

(2) 1963 ex.s. c 27 became Referendum bill No. 13 which was approved by the electorate November 3, 1964.

Chapter 72.20 MAPLE LANE SCHOOL

Sections

72.20.010 School established.
72.20.020 Management—Superintendent.

72.20.040 Duties of superintendent.
72.20.050 Parole or discharge—Behavior credits.
72.20.060 Conditional parole—Apprehension on escape or violation of parole.
72.20.065 Intrusion—Enticement away of girls—Interference—Penalty.
72.20.070 Eligibility restricted.
72.20.080 Education—State board of education to supervise.
72.20.090 Hiring out—Apprenticeships—Compensation.

Commitment: Chapter 13.04 RCW.

Control and treatment of venereal diseases: Chapter 70.24 RCW.

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Financial responsibility for cost of detention of minor: RCW 13.16.085.

Fugitives of this state: Chapter 10.34 RCW.

Infected prisoners, removal: RCW 70.20.140.

Juvenile courts: Chapter 13.04 RCW.

Officers and guards as peace officers: RCW 9.94.050.

Prisoners, state penal institutions: Chapter 9.94 RCW.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

Reformatory—Incorrigible juvenile delinquents: RCW 13.04.200, 72.12.050.

Transfer of child under sixteen convicted of crime amounting to felony: RCW 72.01.410.

Transfer of juvenile from correctional institution to state hospital: RCW 72.01.390, 72.01.400.

72.20.010 School established. There is established at Grand Mound, Thurston county, an institution which shall be known as the Maple Lane school. [1959 c 28 § 72.20.010. Prior: 1955 c 230 § 2; 1913 c 157 § 1; RRS § 4631.]

72.20.020 Management—Superintendent. The government, control and business management of such school shall be vested in the director. The director shall, with the approval of the governor, appoint a suitable superintendent of said school, and shall designate the number of subordinate officers and employees to be employed, and fix their respective salaries, and have power, with the like approval, to make and enforce all such rules and regulations for the administration, government and discipline of the school as the director may deem just and proper, not inconsistent with this chapter. [1959 c 39 § 1; 1959 c 28 § 72.20.020. Prior: 1913 c 157 § 3; RRS § 4633.]

Appointment of superintendent and subordinate employees, general provisions: RCW 72.01.060.

72.20.040 Duties of superintendent. The superintendent, subject to the direction and approval of the director shall:

(1) Have general supervision and control of the grounds and buildings of the institution, the subordinate officers and employees, and the inmates thereof, and all matters relating to their government and discipline.

(2) Make such rules, regulations and orders, not inconsistent with law or with the rules, regulations or directions of the director, as may seem to him proper or necessary for the government of such institution and for the employment, discipline and education of the inmates.

(3) Exercise such other powers, and perform such other duties as the director may prescribe. [1959 c 39 §

2; 1959 c 28 § 72.20.040. Prior: 1913 c 157 § 5; RRS § 4635.]

72.20.050 Parole or discharge—Behavior credits. The department, acting with the superintendent, shall, under a system of marks, or otherwise, fix upon a uniform plan by which girls may be paroled or discharged from the school, which system shall be subject to revision from time to time. Each girl shall be credited for personal demeanor, diligence in labor or study and for the results accomplished, and charged for derelictions, negligence or offense. The standing of each girl shall be made known to her as often as once a month. [1959 c 28 § 72.20.050. Prior: 1913 c 157 § 8; RRS § 4638.]

72.20.060 Conditional parole—Apprehension on escape or violation of parole. Every girl shall be entitled to a trial on parole before reaching the age of twenty years, such parole to continue for at least one year unless violated. The superintendent and resident physician, with the approval of the director, shall determine whether such parole has been violated. Any girl committed to the school who shall escape therefrom, or who shall violate a parole, may be apprehended and returned to the school by any officer or citizen on written order or request of the superintendent. [1959 c 28 § 72.20.060. Prior: 1913 c 157 § 9, part; RRS § 4639, part.]

72.20.065 Intrusion—Enticement away of girls—Interference—Penalty. Any person who shall go upon the school grounds except on lawful business, or by consent of the superintendent, or who shall entice any girl away from the school, or who shall in any way interfere with its management or discipline, shall be guilty of a misdemeanor. [1959 c 28 § 72.20.065. Prior: 1913 c 157 § 9, part; RRS § 4639, part.]

72.20.070 Eligibility restricted. No girl shall be received in the Maple Lane school who is not of sound mind, or who is subject to epileptic or other fits, or is not possessed of that degree of bodily health which should render her a fit subject for the discipline of the school. It shall be the duty of the court committing her to cause such girl to be examined by a reputable physician to be appointed by the court, who will certify to the above facts, which certificate shall be forwarded to the school with the commitment. Any girl who may have been committed to the school, not complying with the above requirements, may be returned by the superintendent to the court making the commitment, or to the officer or institution last having her in charge. The department shall arrange for the transportation of all girls to and from the school. [1959 c 28 § 72.20.070. Prior: 1913 c 157 § 10; RRS § 4640.]

72.20.080 Education—State board of education to supervise. It shall be the duty of the superintendent, subject to the approval of the director, to employ teachers, and as far as practicable, to instruct the girls in all of the branches usually taught in the grades of the common schools of the state, also in such trades and vocational occupations as may be found desirable. The

educational work of the school shall be a part of the educational system of the state, and as such shall be under the supervision of the state board of education. Only those certified by the state superintendent of public instruction shall be employed as teachers. [1959 c 28 § 72.20.080. Prior: 1913 c 157 § 11; RRS § 4641.]

Employment of teachers: RCW 72.01.200.

State board of education: Chapter 28A.04 RCW.

State superintendent of public instruction: Chapter 28A.03 RCW.

72.20.090 Hiring out—Apprenticeships—Compensation. The superintendent shall have power to place any girl under the age of eighteen years at any employment for account of the institution or the girl employed, and receive and hold the whole or any part of her wages for the benefit of the girl less the amount necessary for her board and keep, and may also, with the consent of any girl over fourteen years of age, and the approval of the director endorsed thereon, execute indentures of apprenticeship, which shall be binding on all parties thereto. In case any girl so apprenticed shall prove untrustworthy or unsatisfactory, the superintendent may permit her to be returned to the school, and the indenture may thereupon be canceled. If such girl shall have an unsuitable employer, the superintendent may, with the approval of the director, take her back to the school, and cancel the indenture of apprenticeship. All indentures so made shall be filed and kept in the school. A system may also be established, providing for compensation to girls for services rendered, and payments may be made from time to time, not to exceed in the aggregate to any one girl the sum of twenty-five dollars for each year of service. [1959 c 28 § 72.20.090. Prior: 1913 c 157 § 12; RRS § 4642.]

Chapter 72.23 PUBLIC AND PRIVATE FACILITIES FOR MENTALLY ILL

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72.23.040	Seal of hospital.
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Commitment procedure: Chapter 71.02 RCW.

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

County hospitals: Chapter 36.62 RCW.

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Division of mental health: Chapter 43.20A RCW.

Hospitalization charges: RCW 71.02.310.

Mental illness, commitment procedures, rights, etc: Chapter 71.05 RCW.

Mental illness and inebriacy: Title 71 RCW.

Out-of-state physicians, conditional license to practice in conjunction with institutions: RCW 18.71.095, 18.71.096.

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Procedure as to insane convicts: RCW 72.08.110.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

Sexual psychopaths and psychopathic delinquents: Chapter 71.06 RCW.

State hospitals, allocation of patients: RCW 71.02.450.

Transfer of juvenile from correctional institution to state hospital: RCW 72.01.390, 72.01.400.

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

"Mentally ill person" shall mean any person who, pursuant to the definitions contained in RCW 71.05.020, as a result of a mental disorder presents a likelihood of serious harm to others or himself or is gravely disabled.

"Patient" shall mean a person under observation, care or treatment in a state hospital, or a person found mentally ill by the court, and not discharged from a state hospital, or other facility, to which such person had been ordered hospitalized.

"Licensed physician" shall mean an individual permitted to practice as a physician under the laws of the state, or a medical officer, similarly qualified, of the government of the United States while in this state in performance of his official duties.

"State hospital" shall mean any hospital operated and maintained by the state of Washington for the care of the mentally ill.

"Superintendent" shall mean the superintendent of a state hospital.

"Court" shall mean the superior court of the state of Washington.

"Resident" shall mean a resident of the state of Washington.

Wherever used in this chapter, the masculine shall include the feminine and the singular shall include the plural. [1974 ex.s. c 145 § 2; 1973 1st ex.s. c 142 § 3; 1959 c 28 § 72.23.010. Prior: 1951 c 139 § 2. Formerly RCW 71.02.010.]

Severability—Construction—Effective date—1973 1st ex.s. c 142: See RCW 71.05.900–71.05.930.

72.23.020 State hospitals designated. There are hereby permanently located and established the following state hospitals: Western state hospital at Fort Steilacoom, Pierce county; eastern state hospital at Medical Lake, Spokane county; and northern state hospital near Sedro Woolley, Skagit county. [1959 c 28 § 72.23.020. Prior: 1951 c 139 § 6. Formerly RCW 71.02.440.]

Allocation of patients: RCW 71.02.450.

72.23.030 Superintendent—Qualifications—Powers. The superintendent of a state hospital shall be a skillful practicing physician; he shall have control of the medical, therapeutic, and dietetic treatment of the patients, which shall include authority to cause the performance of all necessary surgery. The superintendent, subject to rules and regulations of the department, shall have control of the internal government and economy of a state hospital and shall appoint and direct all subordinate officers and employees. [1969 c 56 § 2; 1959 c 28 § 72.23.030. Prior: 1951 c 139 § 7. Formerly RCW 71.02.510.]

Appointment of superintendent: RCW 72.01.060.

72.23.040 Seal of hospital. The superintendent shall provide an official seal upon which shall be inscribed the statutory name of the hospital under his charge and the name of the state. He shall affix the seal of the hospital to any notice, order of discharge, or other paper required to be given by him or issued. [1959 c 28 § 72.23.040. Prior: 1951 c 139 § 8. Formerly RCW 71.02.540.]

72.23.050 Superintendent as witness—Exemptions from military, jury duty. The superintendent shall not be required to attend any court as a witness in a civil or juvenile court proceedings, but parties desiring his testimony can take and use his deposition; nor shall he be required to attend as a witness in any criminal case, unless the court before which his testimony shall be desired shall, upon being satisfied of the materiality of his testimony require his attendance; and he and all other persons employed at the hospital shall be exempt from serving on juries; and, in time of peace, from performing military duty; and the certificate of the superintendent shall be evidence of such employment. [1959 c 28 § 72.23.050. Prior: 1951 c 139 § 9. Formerly RCW 71.02.520.]

72.23.060 Gifts—Record—Use. The superintendent is authorized to accept and receive from any person or organization gifts of money or personal property on behalf of the state hospital under his charge, or on behalf of the patients therein. The superintendent is authorized to use such money or personal property for the purposes specified by the donor where such purpose is consistent with law. In the absence of a specified use the superintendent may use such money or personal property for the benefit of the state hospital under his charge or for the general benefit of the patients therein. The superintendent shall keep an accurate record of the amount or kind of gift, the date received, and the name and address of the donor. The superintendent may

deposit any money received as he sees fit upon the giving of adequate security. Any increase resulting from such gift may be used for the same purpose as the original gift. Gratuities received for services rendered by a state hospital staff in their official capacity shall be used for the purposes specified in this section. [1959 c 28 § 72.23.060. Prior: 1951 c 139 § 10. Formerly RCW 71.02.600.]

72.23.070 Voluntary patients—Right to receive—Application—Review of condition and status—Minors, commitment procedure and requirements, rights. Pursuant to rules and regulations established by the department, a public or private facility may receive any person who is a suitable person for care and treatment as mentally ill, or for observation as to the existence of mental illness, upon the receipt of a written application of the person, or others on his behalf, in accordance with the following requirements:

(1) In the case of a person eighteen years of age or over, the application shall be voluntarily made by the person;

(2) In the case of a person thirteen years of age or under, the application may be voluntarily made by his parents, or by the parent, conservator, guardian, or other person entitled to his custody. When such person is more than thirteen years of age, such application must be accompanied by the written consent, knowingly and voluntarily given, of the minor. All such voluntary applications to a public agency shall be reviewed by the county mental health professionals, who shall submit a written report and evaluation with recommendations to the superintendent of such facility to which such application is made stating whether treatment is necessary and proper on a voluntary basis and evaluating the reasons for voluntary commitment. Such person's condition and status shall be reviewed by the professional person in charge of the facility or his designee at least once each one hundred eighty days. A person under eighteen years of age received into a public facility as a voluntary patient shall not be retained after he reaches eighteen years of age, but such person, upon reaching eighteen years of age, may apply for admission into a public or private facility as a voluntary patient.

(3) No minor over thirteen years of age shall be involuntarily committed to a state or private facility for care and treatment as mentally disordered, or for observation as to the existence of mental disorder, except in accordance with the following requirements:

(a) The facility must be certified by the department of social and health services to provide evaluation and treatment to persons under eighteen years of age suffering from mental disorders: *Provided*, That a physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility: *Provided further*, That a facility which is part of, or a part of, or operated by, the department of social and health services or any federal agency will not require certification.

(b) A petition shall be filed with the juvenile court by the person's parent, parents, conservator, guardian, or by the juvenile court itself. The petition shall set forth the

reasons why commitment is necessary and what alternative courses of treatment have been explored. The juvenile court shall then conduct a hearing, at which the person under eighteen years of age shall be represented by an attorney, to determine whether commitment is clearly in the best interests of the person sought to be committed, and that no less restrictive alternative exists: *Provided*, That, if in the opinion of the designated county mental health professional a minor presents an imminent likelihood of serious harm to himself or others, he may be temporarily detained for up to seventy-two hours by a licensed facility pending petition to the juvenile court for further commitment.

(c) If the juvenile court determines that commitment is clearly necessary, it will issue an order approving such petition. If the juvenile court determines that a less restrictive alternative is desirable, it may order that alternatives be followed.

(d) If a person under the age of eighteen years is committed to a state or private facility pursuant to this section, the juvenile court recommending commitment shall require a report from the facility every one hundred eighty days that sets forth such facts as the juvenile court may require. Upon receipt of the report, the juvenile court shall undertake a review of the status of such person to determine whether or not it is still clearly in the best interests of the patient that he remain in the facility. If the juvenile court determines that further commitment is not clearly in the best interests of the patient, it shall order release upon such conditions as it deems necessary.

(e) Every person under the age of eighteen shall have all the rights provided for persons eighteen years of age or over under this chapter as now or hereafter amended except those rights specifically modified by this section: *Provided*, That the juvenile court rather than the superior court shall be responsible for any proceedings. A voluntarily admitted minor over thirteen years of age shall have the right to release on the next judicial day from the date of request unless a petition is filed in juvenile court by the professional person in charge of the facility or his designee on the grounds that the juvenile is dangerous to himself or others or that it would be in the best interests of the juvenile that he remain in the facility. Furthermore, should the patient and his parent, parents, conservator, or guardian both request his release, he shall be immediately released unless the professional person in charge of the facility objects immediately in writing to the juvenile court on the grounds that the person is dangerous to himself or others and that it would not be in the patient's best interests to be released. Should this occur, the juvenile court shall hold a hearing on the issue within five judicial days and determine whether the person should be released.

(f) Nothing in this section shall prohibit the professional person in charge of the facility in which the person is being treated from releasing him at any time when, in the opinion of said professional person, further commitment would no longer be in the best interests of the patient.

Whenever a person is released by the professional person in charge of a facility under this section, said

person shall, in writing, notify the juvenile court which committed the person for treatment.

(4) In the case of a person eighteen years of age or over for whom a conservator or guardian of the person has been appointed, such application shall be made by said conservator or guardian, when so authorized by proper court order in the conservatorship or guardianship proceedings. [1975 1st ex.s. c 199 § 11; 1974 ex.s. c 145 § 3; 1973 2nd ex.s. c 24 § 1; 1973 1st ex.s. c 142 § 4; 1971 ex.s. c 292 § 50; 1959 c 28 § 72.23.070. Prior: 1951 c 139 § 11; 1949 c 198 § 19, part; Rem. Supp. 1949 § 6953-19, part. Formerly RCW 71.02.030.]

Severability—Construction—Effective date—1973 1st ex.s. c 142: See RCW 71.05.900-71.05.930.

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

Involuntary commitment procedure: Chapter 71.05 RCW.

Mental illness: Chapter 71.05 RCW.

72.23.080 Voluntary patients—Legal competency—Record. Any person received and detained in a state hospital pursuant to RCW 72.23.070 shall be deemed a voluntary patient and shall not suffer a loss of legal competency by reason of his application and admission. Upon the admission of a voluntary patient to a state hospital the superintendent shall immediately forward to the department the record of such patient showing the name, address, sex, age, place of birth, occupation, date of admission, name of nearest relative, and such other information as the department may from time to time require. [1959 c 28 § 72.23.080. Prior: 1951 c 139 § 12; 1949 c 198 § 19, part; Rem. Supp. 1949 § 6953-19, part. Formerly RCW 71.02.040.]

72.23.100 Voluntary patients—Policy—Duration. It shall be the policy of the department to permit liberal use of the foregoing sections for the admission of those cases that can be benefited by treatment and returned to normal life and mental condition, in the opinion of the superintendent, within a period of six months. No person shall be carried as a voluntary patient for a period of more than one year. [1973 1st ex.s. c 142 § 5; 1959 c 28 § 72.23.100. Prior: 1951 c 139 § 14; 1949 c 198 § 19, part; Rem. Supp. 1949 § 6953-19, part. Formerly RCW 71.02.060.]

Severability—Construction—Effective date—1973 1st ex.s. c 142: See RCW 71.05.900-71.05.930.

72.23.110 Voluntary patients—Limitation as to number. If it becomes necessary because of inadequate facilities or staff, the department may limit applicants for voluntary admission in accordance with such rules and regulations as it may establish. The department may refuse all applicants for voluntary admission where lack of adequate facilities or staff make such action necessary. [1959 c 28 § 72.23.110. Prior: 1951 c 139 § 15. Formerly RCW 71.02.070.]

72.23.120 Voluntary patients—Charges for hospitalization. Payment of hospitalization charges shall not be a necessary requirement for voluntary admission:

Provided, however, The department may request payment of hospitalization charges, or any portion thereof, from the patient or relatives of the patient within the following classifications: Spouse, parents, or children. Where the patient or relatives within the above classifications refuse to make the payments requested, the department shall have the right to discharge such patient or initiate proceedings for involuntary hospitalization. The maximum charge shall be the same for voluntary and involuntary hospitalization. [1959 c 28 § 72.23.120. Prior: 1951 c 139 § 16. Formerly RCW 71.02.080.]

72.23.130 History of patient. It shall be the duty of the superintendent to ascertain by diligent inquiry and correspondence, the history of each and every patient admitted to his hospital. [1959 c 28 § 72.23.130. Prior: 1951 c 139 § 40. Formerly RCW 71.02.530.]

72.23.160 Escape—Apprehension and return. If a patient shall escape from a state hospital the superintendent shall cause immediate search to be made for him and return him to said hospital wherever found. Notice of such escape shall be given to the committing court who may issue an order of apprehension and return directed to any peace officer within the state. Notice may be given to any sheriff or peace officer, who, when requested by the superintendent, may apprehend and detain such escapee or return him to the state hospital without warrant. [1959 c 28 § 72.23.160. Prior: 1951 c 139 § 43. Formerly RCW 71.02.630.]

72.23.170 Escape of patient—Penalty for assisting. Any person who procures the escape of any patient of any state hospital for the mentally ill, or institutions for psychopaths to which such patient has been lawfully committed, or who advises, connives at, aids, or assists in such escape or conceals any such escape, is guilty of a felony and shall be punished by imprisonment in a state penal institution for a term of not more than five years or by a fine of not more than five hundred dollars or by both imprisonment and fine. [1959 c 28 § 72.23.170. Prior: 1957 c 225 § 1, part; 1949 c 198 § 20, part; Rem. Supp. 1949 § 6953-20, part. Formerly RCW 71.12.620, part.]

72.23.180 Discharge, parole, death, escape—Notice—Certificate of discharge. Whenever a patient dies, escapes, or is paroled or discharged from a state hospital, the superintendent shall immediately notify the clerk of the court which ordered such patient's hospitalization. A copy of such notice shall be given to the next of kin or next friend of such patient if their names or addresses are known or can, with reasonable diligence, be ascertained. Whenever a patient is discharged the superintendent shall issue such patient a certificate of discharge. Such notice or certificate shall give the date of parole, discharge, or death of said patient, and shall state the reasons for parole or discharge, or the cause of death, and shall be signed by the superintendent. [1959 c 28 § 72.23.180. Prior: 1951 c 139 § 44. Formerly RCW 71.02.640.]

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

72.23.190 Death—Report to coroner. In the event of the sudden or mysterious death of any patient at a state hospital, not on parole or escape therefrom, such fact shall be reported by the superintendent thereof to the coroner of the county in which the death occurs. [1959 c 28 § 72.23.190. Prior: 1951 c 139 § 45. Formerly RCW 71.02.660.]

72.23.200 Persons under eighteen—Confinement in adult wards. No mentally ill person under the age of sixteen years shall be regularly confined in any ward in any state hospital which ward is designed and operated for the care of the mentally ill eighteen years of age or over. No person of the ages of sixteen and seventeen shall be placed in any such ward, when in the opinion of the superintendent such placement would be detrimental to the mental condition of such a person or would impede his recovery or treatment. [1971 ex.s. c 292 § 52; 1959 c 28 § 72.23.200. Prior: 1951 c 139 § 46; 1949 c 198 § 17; Rem. Supp. 1949 § 6953-17. Formerly RCW 71.02.550.]

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

72.23.210 Persons under eighteen—Special wards and attendants. The department may designate one or more wards at one or more state hospitals as may be deemed necessary for the sole care and treatment of persons under eighteen years of age admitted thereto. Nurses and attendants for such ward or wards shall be selected for their special aptitude and sympathy with such young people, and occupational therapy and recreation shall be provided as may be deemed necessary for their particular age requirements and mental improvement. [1971 ex.s. c 292 § 53; 1959 c 28 § 72.23.210. Prior: 1951 c 139 § 47; 1949 c 198 § 18; Rem. Supp. 1949 § 6953-18. Formerly RCW 71.02.560.]

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

72.23.230 Patient's property—Superintendent as custodian—Management and accounting. The superintendent of a state hospital shall be the custodian without compensation of such personal property of a patient involuntarily hospitalized therein as may come into the superintendent's possession while the patient is under the jurisdiction of the hospital. As such custodian, the superintendent shall have authority to disburse moneys from the patients' funds for the following purposes only and subject to the following limitations:

(1) The superintendent may disburse any of the funds in his possession belonging to a patient for such personal needs of that patient as may be deemed necessary by the superintendent; and

(2) Whenever the funds belonging to any one patient exceed the sum of three hundred dollars, the superintendent may apply the excess to the payment of the state hospitalization and/or outpatient charges of such patient except, reduction of such funds to a lesser amount may

be made where necessary to qualify such patient for eligibility in any public or private program for the care, treatment, hospitalization, support, training, or rehabilitation of such patient, and to qualify such patient for the payment from any public or private program providing benefits for the payment of all or a portion of the costs of care, treatment hospitalization, support, training, or rehabilitation or for the discharge of the liabilities imposed by the provisions of RCW 71.02.411; and

(3) When a patient is paroled, the superintendent shall deliver unto the said patient all or such portion of the funds or other property belonging to the patient as the superintendent may deem necessary and proper in the interests of the patient's welfare, and the superintendent may during the parole period deliver to the patient such additional property or funds belonging to the patient as the superintendent may from time to time determine necessary and proper. When a patient is discharged from the jurisdiction of the hospital, the superintendent shall deliver to such patient all funds or other property belonging to the patient.

All funds held by the superintendent as custodian may be deposited in a single fund. Annual reports of receipts and expenditures shall be forwarded to the department, and shall be open to inspection by interested parties: *Provided*, That all interest accruing from, or as a result of the deposit of such moneys in a single fund shall be used by the superintendent for the general welfare of all the patients of such institution: *Provided, further*, That when the personal accounts of patients exceed three hundred dollars, the interest accruing from such excess shall be credited to the personal accounts of such patients. All such expenditures shall be accounted for by the superintendent.

The appointment of a guardian for the estate of such patient shall terminate the superintendent's authority to pay state hospitalization charges upon the superintendent's receipt of a certified copy of letters of guardianship. Upon the guardian's request, the superintendent shall forward to such guardian any funds or other property of the patient remaining in the superintendent's possession, together with a final accounting of receipts and expenditures. [1971 c 82 § 1; 1959 c 60 § 1; 1959 c 28 § 72.23.230. Prior: 1953 c 217 § 2; 1951 c 139 § 49. Formerly RCW 71.02.570.]

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Guardianship of estate: Chapters 11.88 and 11.92 RCW.

72.23.240 Patient's property—Delivery to superintendent as acquittance—Defense, indemnity. Upon receipt of a written request signed by the superintendent stating that a designated patient of such hospital is involuntarily hospitalized therein, and that no guardian of his estate has been appointed, any person, bank, firm or corporation having possession of any money, bank accounts, or choses in action owned by such patient, may, if the balance due does not exceed one thousand dollars, deliver the same to the superintendent and mail written notice thereof to such patient at such hospital. The receipt of the superintendent shall be full and complete acquittance for such payment and the person,

bank, firm or corporation making such payment shall not be liable to the patient or his legal representatives. All funds so received by the superintendent shall be deposited in such patient's personal account at such hospital and be administered in accordance with this chapter.

If any proceeding is brought in any court to recover property so delivered, the attorney general shall defend the same without cost to the person, bank, firm or corporation effecting such delivery, and the state shall indemnify such person, bank, firm or corporation against any judgment rendered as a result of such proceeding. [1959 c 28 § 72.23.240. Prior: 1953 c 217 § 1. Formerly RCW 71.02.575.]

72.23.250 Funds donated to patients. The superintendent shall also have authority to receive funds for the benefit of individual patients and may disburse such funds according to the instructions of the donor of such funds. [1959 c 28 § 72.23.250. Prior: 1951 c 139 § 50. Formerly RCW 71.02.580.]

72.23.260 Federal patients—Agreements authorized. The department shall have the power, in the name of the state, to enter into contracts with any duly authorized representative of the United States government, providing for the admission to, and the separate or joint observation, maintenance, care, treatment and custody in, state hospitals of persons entitled to or requiring the same, at the expense of the United States, and contracts providing for the separate or joint maintenance, care, treatment or custody of such persons hospitalized in the manner provided by law, and to perform such contracts, which contracts shall provide that all payments due the state of Washington from the United States for services rendered under said contracts shall be paid to the department. [1959 c 28 § 72.23.260. Prior: 1951 c 139 § 65. Formerly RCW 71.02.460.]

72.23.280 Nonresidents—Hospitalization. Nonresidents of this state conveyed or coming herein while mentally ill shall not be hospitalized in a state hospital, but this prohibition shall not prevent the hospitalization and temporary care in said hospitals of such persons stricken with mental illness while traveling or temporarily sojourning in this state, or sailors attacked with mental illness upon the high seas and first arriving thereafter in some port within this state. [1959 c 28 § 72.23.280. Prior: 1951 c 139 § 67. Formerly RCW 71.02.470.]

72.23.290 Transfer of patients—Authority of transferee. Whenever it appears to be to the best interests of the patients concerned, the department shall have the authority to transfer such patients among the various state hospitals pursuant to rules and regulations established by said department. The superintendent of a state hospital shall also have authority to transfer patients eligible for treatment to the veterans' administration or other United States government agency where such transfer is satisfactory to such agency. Such agency shall possess the same authority over such patients as the superintendent would have possessed had the patient

remained in a state hospital. [1959 c 28 § 72.23.290. Prior: 1951 c 139 § 68. Formerly RCW 71.02.480.]

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

State hospitals—Allocation of patients: RCW 71.02.450.

72.23.300 Bringing narcotics, intoxicating liquors, weapons, etc., into institution or its grounds prohibited—Penalty. Any person not authorized by law so to do, who brings into any state institution for the care and treatment of mental illness or within the grounds thereof, any opium, morphine, cocaine or other narcotic, or any intoxicating liquor of any kind whatever, except for medicinal or mechanical purposes, or any firearms, weapons, or explosives of any kind is guilty of a felony. [1959 c 28 § 72.23.300. Prior: 1949 c 198 § 52; Rem. Supp. 1949 § 6932-52. Formerly RCW 71.12.630.]

Narcotic drugs: Chapter 69.32 RCW.

Uniform controlled substances act: Chapter 69.50 RCW.

72.23.900 Construction—Purpose—1959 c 28. The provisions of this chapter shall be liberally construed so that persons who are in need of care and treatment for mental illness shall receive humane care and treatment and be restored to normal mental condition as rapidly as possible with an avoidance of loss of civil rights where not necessary, and with as little formality as possible, still preserving all rights and all privileges of the person as guaranteed by the Constitution. [1959 c 28 § 72.23.900. Prior: 1951 c 139 § 1.]

72.23.910 Construction—Effect on laws relating to the criminally insane—"Insane" as used in other statutes. Nothing in this chapter shall be construed as affecting the laws of this state relating to the criminally insane or insane inmates of penal institutions. Where the term "insane" is used in other statutes of this state its meaning shall be synonymous with mental illness as defined in this chapter. [1959 c 28 § 72.23.910. Prior: 1951 c 139 § 4; 1949 c 198 § 15; Rem. Supp. 1949 § 6953-15. Formerly RCW 71.02.020.]

Chapter 72.25

NONRESIDENT INSANE, FEEBLE-MINDED, SEXUAL PSYCHOPATHS, AND PSYCHOPATHIC DELINQUENTS.

Sections

72.25.010	Deportation of aliens—Return of residents.
72.25.020	Return of nonresidents—Reciprocity—Expense—Resident of this state defined.
72.25.030	Assistance—Payment of expenses.

72.25.010 Deportation of aliens—Return of residents. It shall be the duty of the director of institutions, in cooperation with the United States bureau of immigration and/or the United States department of the interior, to arrange for the deportation of all alien sexual psychopaths, psychopathic delinquents, insane, or feeble-minded who are now confined in, or who may hereafter be committed to, any state hospital for the sexual psychopath, psychopathic delinquent, insane, or feeble-

mind in this state; to transport such alien sexual psychopaths, psychopathic delinquents, insane, or feeble-minded to such point or points as may be designated by the United States bureau of immigration or by the United States department of the interior; and to give written permission for the return of any resident of Washington now or hereafter confined in a hospital for the sexual psychopath, psychopathic delinquent, insane, or feeble-minded in a territory of the United States or in a foreign country. [1965 c 78 § 1; 1959 c 28 § 72.25-.010. Prior: 1957 c 29 § 1; 1953 c 232 § 1. Formerly RCW 71.04.270.]

Sexual psychopaths and psychopathic delinquents: Chapter 71.06 RCW.

72.25.020 Return of nonresidents—Reciprocity—Expense—Resident of this state defined. The director shall also return all nonresident sexual psychopaths, psychopathic delinquents, insane, or feeble-minded who are now confined in or who may hereafter be committed to a state hospital for the sexual psychopath, psychopathic delinquent, insane, or feeble-minded in this state to the states or state in which they may have a legal residence. For the purpose of facilitating the return of such persons the director may enter into a reciprocal agreement with any other state for the mutual exchange of sexual psychopaths, psychopathic delinquents, insane, or feeble-minded now confined in or hereafter committed to any hospital for the sexual psychopath, psychopathic delinquent, insane, or feeble-minded in one state whose legal residence is in the other, and he may give written permission for the return of any resident of Washington now or hereafter confined in a hospital for the sexual psychopath, psychopathic delinquent, insane, or feeble-minded in another state. Such residents may be returned directly to the proper Washington state institution without further court proceedings: *Provided*, That if the superintendent of such institution is of the opinion that the returned person is not a sexual psychopath, a psychopathic delinquent, insane, or feeble-minded he may discharge said patient: *Provided further*, That if such superintendent deems such person a sexual psychopath, a psychopathic delinquent, insane, or feeble-minded, he shall file an application for commitment within ninety days of arrival at the Washington institution.

A person shall be deemed to be a resident of this state within the meaning of this chapter who has maintained his domiciliary residence in this state for a period of one year preceding commitment to a state institution without receiving assistance from any tax supported organization and who has not subsequently acquired a domicile in another state: *Provided*, That any period of time spent by such person while an inmate of a state hospital or state institution or while on parole, escape, or leave of absence therefrom shall not be counted in determining the time of residence in this or another state.

All expenses incurred in returning sexual psychopaths, psychopathic delinquents, insane, or feeble-minded from this to another state may be paid by this state, but the expense of returning residents of this state shall be borne by the state making the return. [1965 c 78 § 2; 1959 c

28 § 72.25.020. Prior: 1957 c 29 § 2; 1953 c 232 § 2. Formerly RCW 71.04.280.]

72.25.030 Assistance—Payment of expenses. For the purpose of carrying out the provisions of this chapter the director may employ all help necessary in arranging for and transporting such alien and nonresident sexual psychopaths, psychopathic delinquents, insane, or feeble-minded, and the cost and expense of providing such assistance, and all expenses incurred in effecting the transportation of such alien and nonresident sexual psychopaths, psychopathic delinquents, insane, or feeble-minded, shall be paid from the funds appropriated for that purpose upon vouchers approved by the department. [1965 c 78 § 3; 1959 c 28 § 72.25.030. Prior: 1957 c 29 § 3; 1953 c 232 § 3. Formerly RCW 71.04.290.]

Chapter 72.27

INTERSTATE COMPACT ON MENTAL HEALTH

Sections

72.27.010	Compact enacted.
72.27.020	Director is compact administrator—Rules and regulations—Cooperation with other agencies.
72.27.030	Supplementary agreements.
72.27.040	Financial arrangements.
72.27.050	Prerequisites for transfer of person to another party state—Release or return of residents, jurisdiction, laws applicable.
72.27.060	Transmittal of copies of chapter.
72.27.070	Right to deport aliens and return residents of non-party states preserved.

72.27.010 Compact enacted. The Interstate Compact on Mental Health is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions

of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of

patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact

through any and all states party to this compact, without interference.

ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances: *Provided, however,* That in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal

committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing

to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1965 ex.s. c 26 § 1.]

Chapter added: "The foregoing provisions of this act are added to chapter 28, Laws of 1959 and to Title 72 RCW, and shall constitute a new chapter therein." [1965 ex.s. c 26 § 8.]

Effective date—1965 ex.s. c 26: "This act shall take effect upon July 1, 1965." [1965 ex.s. c 26 § 9.]

72.27.020 Director is compact administrator—Rules and regulations—Cooperation with other agencies. Pursuant to said compact provided in RCW 72.27-.010, the director of the department of institutions shall be the compact administrator and who, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or any supplementary agreement or agreements entered into by this state thereunder. [1965 ex.s. c 26 § 2.]

72.27.030 Supplementary agreements. The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. [1965 ex.s. c 26 § 3.]

72.27.040 Financial arrangements. The compact administrator, subject to the moneys available therefor, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder. [1965 ex.s. c 26 § 4.]

72.27.050 Prerequisites for transfer of person to another party state—Release or return of residents, jurisdiction, laws applicable. No person shall be transferred to another party state pursuant to this chapter unless the compact administrator first shall have obtained either:

(a) The written consent to such transfer by the proposed transferee or by others on his behalf, which consent shall be executed in accordance with the requirements of RCW 72.23.070, and if such person was originally committed involuntarily, such consent also shall be approved by the committing court; or

(b) An order of the superior court approving such transfer, which order shall be obtained from the committing court, if such person was committed involuntarily, otherwise from the superior court of the county where such person resided at the time of such commitment; and such order shall be issued only after notice and hearing in the manner provided for the involuntary commitment of mentally ill or mentally deficient persons as the case may be.

The courts of this state shall have concurrent jurisdiction with the appropriate courts of other party states to hear and determine petitions seeking the release or return of residents of this state who have been transferred from this state under this chapter to the same extent as if such persons were hospitalized in this state; and the laws of this state relating to the release of such persons shall govern the disposition of any such proceeding. [1965 ex.s. c 26 § 5.]

72.27.060 Transmittal of copies of chapter. Duly authorized copies of this chapter shall, upon its approval be transmitted by the secretary of state to the governor of each state, the attorney general and the administrator of general services of the United States, and the council of state governments. [1965 ex.s. c 26 § 6.]

72.27.070 Right to deport aliens and return residents of non-party states preserved. Nothing in this chapter shall affect the right of the director of the department of institutions to deport aliens and return residents of non-party states as provided in chapter 72.25 RCW. [1965 ex.s. c 26 § 7.]

Chapter 72.29

MULTI-USE FACILITIES FOR THE MENTALLY OR PHYSICALLY DEFICIENT OR THE MENTALLY ILL

Sections

72.29.010 Harrison Memorial Hospital property and facilities (Olympic Center for Mental Health and Mental Retardation).

72.29.010 Harrison Memorial Hospital property and facilities (Olympic Center for Mental Health and Mental Retardation). After the acquisition of Harrison Memorial Hospital, the department of institutions is authorized to enter into contracts for the repair or remodeling of the hospital to the extent they are necessary and reasonable, in order to establish a multi-use facility for the mentally or physically deficient or the mentally ill. The director of the department of institutions is authorized to determine the most feasible and desirable use of the facility and to operate the facility in the manner he deems most beneficial to the mentally and physically deficient, or the mentally ill, and is authorized, but not limited to programs for out-patient, diagnostic and referral, day care, vocational and educational services to the community which he determines are in the best interest of the state. [1965 c 11 § 3.]

Declaration of purpose: "The state facilities to provide community services to the mentally and physically deficient and the mentally ill are inadequate to meet the present demand. Great savings to the taxpayers can be achieved while helping to meet these worthwhile needs. It is therefore the purpose of this act to provide for acquisition or lease of Harrison Memorial Hospital property and facilities and the operation thereof as a multi-use facility for the mentally and physically deficient and the mentally ill." [1965 c 11 § 1.]

Authorization to acquire: "The department of institutions is authorized to acquire by purchase, lease, or lease with option to purchase, and to accept a deed or execute a lease or lease and option to purchase in the name of the state of Washington, subject to the approval as to form by the attorney general, to that certain property located in Kitsap county and commonly known as Harrison Memorial Hospital, together with all necessary personal property, fixtures, and land." [1965 c 11 § 2.] The foregoing annotations apply to RCW 72.29.010.

Chapter 72.30 INTERLAKE SCHOOL

Sections

72.30.010	Use of surplus facilities at eastern state hospital authorized.
72.30.020	Selection and designation of facilities—Joint use.
72.30.030	Superintendent—Appointment—Qualifications.
72.30.040	Powers and duties of superintendent.
72.30.050	Persons eligible for admission—Transfers from state residential schools and hospitals.

72.30.010 Use of surplus facilities at eastern state hospital authorized. The director of institutions is authorized to utilize at the eastern state hospital, surplus physical facilities as an institution for mentally deficient persons eligible for admission or admitted to a state institution. The institution authorized by this chapter shall be known as the "Interlake School". [1967 ex.s. c 18 § 1.]

72.30.020 Selection and designation of facilities—Joint use. The director of institutions is authorized to designate and select such buildings and facilities and tracts of land at the eastern state hospital, which are surplus to the needs of the department of institutions for mentally ill persons, and which are reasonably necessary and adequate for a school for mentally deficient persons. The director of institutions shall also designate those buildings, equipment and facilities which are to be used jointly and mutually by both the eastern state hospital

and the interlake school for mentally deficient persons. [1967 ex.s. c 18 § 2.]

72.30.030 Superintendent—Appointment—Qualifications. The superintendent of the interlake school for mentally deficient persons shall be appointed by the director and shall have such administrative experience and possess such qualifications as shall be determined by the state personnel board subject to the advice and approval of the director. [1967 ex.s. c 18 § 3.]

72.30.040 Powers and duties of superintendent. The superintendent shall have the following powers, duties and responsibilities:

(1) Subject to the rules and regulations of the department and the state personnel board, he shall appoint all subordinate officers and employees.

(2) Subject to the rules and regulations of the department, he shall supervise and manage the school, grounds, buildings and equipment, the subordinate officers and employees, and the persons committed, admitted or transferred to such school and shall have custody of such persons until they are released, discharged or transferred as provided by law.

(3) He shall be the custodian of the personal property of all residents of the school subject to the provisions of RCW 72.33.180 as now or hereafter amended.

(4) Subject to the approval of the director, he shall be authorized to establish such industrial, vocational, educational or training programs as would be most beneficial to the residents of such school.

(5) Except as otherwise provided in this chapter, he shall administer the institution in accordance with the provisions of chapter 72.33 RCW. [1967 ex.s. c 18 § 4.]

72.30.050 Persons eligible for admission—Transfers from state residential schools and hospitals. The director of institutions shall be authorized to admit to the interlake school for mentally deficient persons, any mentally deficient person eligible for admission to any state residential school for such persons. He shall be further authorized to transfer to such institution, persons admitted to other state residential schools or persons committed to state hospitals who are in need of care, treatment and training for mental deficiency. [1967 ex.s. c 18 § 5.]

Chapter 72.33 STATE RESIDENTIAL SCHOOLS— RESIDENTIAL PLACEMENT, ETC.

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- Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.*
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- Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.*
- 72.33.010 Declaration of purpose.** The purposes of this chapter are: To provide for those children and adults who are exceptional in their needs for care, treatment and education by reason of mental and/or physical deficiency, residential care designed to develop their individual capacities to their optimum; to provide for admittance, withdrawal and discharge from state residential schools upon parental application; and to insure a comprehensive program for the education, guidance, care, treatment and rehabilitation of all persons admitted to Lakeland Village and Rainier school and such other like schools as may be hereafter established. [1959 c 28 § 72.33.010. Prior: 1957 c 102 § 1; 1937 c 10 § 3; RRS § 4679-3.]
- 72.33.020 Definitions.** As used in this chapter, unless the context requires otherwise:
- (1) "Mental deficiency" is a state of subnormal development of the human organism in consequence of which the individual affected is mentally incapable of assuming those responsibilities expected of the socially adequate person such as self-direction, self-support and social participation.
- (2) "Physical deficiency" is a state of physical impairment of the human organism in consequence of which

the individual affected is physically incapable of assuming those responsibilities expected of the socially adequate person such as self-direction, self-support and social participation.

(3) "Parent" is the person or persons having the legal right to custody of a child by reason of kinship by birth or adoption.

(4) "State school" shall mean any residential school of the department established, operated and maintained by the state of Washington for the education, guidance, care, treatment and rehabilitation of mentally and/or physically deficient persons as defined herein.

(5) "Resident of a state school" shall mean a person, whose mental and/or physical involvement requires the specialized care, treatment and educational instruction therein provided, and who has been admitted upon parental or guardian's application, or found in need of residential care by proper court and duly received.

(6) "Court" shall mean the superior court of the state of Washington.

(7) "Division" shall mean the division of children and youth services of the department of institutions or its successor.

(8) "Resident of the state of Washington" shall mean a person who has acquired his domicile in this state by continuously residing within the state for a period of not less than one year before application for admission is made: *Provided*, That the residence of an unemancipated minor shall be imputed from the residence of the parents if they are living together, or from the residence of the parent with whom the child resides, and if the parental rights and responsibilities regarding a minor have been transferred by the court, then the residence of such minor shall be imputed from the person to whom such have been awarded.

(9) "Superintendent" shall mean the superintendent of Lakeland Village, Rainier school and other like residential schools that may be hereafter established.

(10) "Custody" shall mean immediate physical attendance, retention and supervision.

(11) "Placement" shall mean an extramural status for the resident's best interests granted after reasonable notice and consultation with the parents or guardian and such resident.

(12) "Discharge" shall mean the relinquishment by the state of all rights and responsibilities it may have acquired by reason of the acceptance for admission of any resident.

(13) "Residential placement" is any out-of-home placement providing domiciliary type care among other services for which the state makes payment in whole or in part including, but not limited to, state residential schools, group homes, group training homes, boarding homes and nursing homes, but does not include placement in a state juvenile or adult correctional facility without consultation as provided for in RCW 72.33.160.

(14) "Domiciliary care services" shall mean the furnishing of necessary room, board, laundry, clothing, housekeeping, and other personal care services.

(15) "Secretary" means the secretary of social and health services or his designee. [1975 1st ex.s. c 246 § 1;

1973 1st ex.s. c 154 § 101; 1959 c 28 § 72.33.020. Prior: 1957 c 102 § 2.]

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

72.33.030 Lakeland Village, Rainier, Yakima Valley, and Fircrest Schools established. There are hereby permanently established the following state schools for the care of the persons herein provided to be served: Lakeland Village, located at Medical Lake, Spokane county, Washington, Rainier School, located at Buckley, Pierce county, Washington, Yakima Valley School, located at Selah, Yakima county, Washington and Fircrest School, located at Seattle, King county, Washington. [1959 c 31 § 1; 1959 c 28 § 72.33.030. Prior: 1957 c 102 § 3. (i) 1905 c 70 § 1; RRS § 4655. (ii) 1947 c 157 § 1; 1939 c 62 § 1; 1917 c 64 § 1; Rem. Supp. 1947 § 4656. (iii) 1905 c 70 § 2; RRS § 4658. (iv) 1947 c 157 § 2; Rem. Supp. 1947 § 4679a. (v) 1937 c 10 § 2; RRS § 4679-2.]

72.33.040 Superintendents—Qualifications—Powers and duties. The superintendent of a state school appointed after June 12, 1957 shall be a person of good character, over the age of thirty years, in good physical health, and either a physician licensed to practice in the state of Washington or has attained a minimum of a master's degree from an accredited college or university in psychology, social science, or education, and in addition shall have had suitable experience in an administrative or professional capacity in the residential care, treatment and training of mentally deficient persons.

The superintendent shall have custody of all residents and control of the medical, educational, therapeutic and dietetic treatment of all persons resident in such state school: *Provided*, That the superintendent shall cause surgery to be performed on any resident only upon gaining the consent of a parent or guardian, except, if after reasonable effort to locate the parents or guardian and the health of such resident is certified by the attending physician to be jeopardized unless such surgery is performed, the required consent shall not be necessary.

The superintendent shall have control of the internal government and economy of the state school and shall appoint and direct all subordinate officers and employees: *Provided*, That the powers and duties conferred upon the superintendent shall be subject to the rules and regulations of the department and the state personnel board.

The superintendent shall have authority to engage the residents of the state school in beneficial work programs but shall not abuse such therapy by excessive hours or for purposes of discipline or punishment. [1969 c 56 § 3; 1959 c 28 § 72.33.040. Prior: 1957 c 102 § 4. (i) 1937 c 10 § 19; RRS § 4679-19. (ii) 1937 c 10 § 7; RRS § 4679-7.]

Superintendent, general provisions: RCW 72.01.060.

72.33.050 School educational departments to be created—Comprehensive program. There shall be an educational department created and maintained within each state school which shall provide a comprehensive program of academic, vocational, recreational and other

educational services best adapted to meet the needs and capabilities of each resident therein whether such resident must always live within the protected community of the school or can be prepared and assisted to live without.

The department of public instruction shall assist the state schools in all feasible ways including financial aid so that the educational programs maintained therein shall be comparable to such programs advocated by the department of instruction for children with similar aptitudes in local school districts.

Within its available resources, each state school shall, upon request from a local school district, provide such clinical, counseling and evaluating services as may assist the local district lacking such professional resources in determining the needs of its exceptional children. [1959 c 28 § 72.33.050. Prior: 1957 c 102 § 5. (i) 1913 c 173 § 14; RRS § 4672. (ii) 1937 c 10 § 18; RRS § 4672-18.]

Schools and colleges: Titles 28A, 28B RCW.
Superintendent of public instruction: Chapter 28A.03 RCW.

72.33.070 Department of health to determine capacity of residential quarters. The department of health shall determine by the application of proper criteria the maximum number of children to reside in the residential quarters of the state schools and the superintendent shall adhere to such standards unless written permission is granted by the department to exceed such rated capacities. [1959 c 28 § 72.33.070. Prior: 1957 c 102 § 7.]

72.33.080 Department of public assistance to aid placement in foster homes. The department of public assistance shall aid the superintendents of the state schools in the placement of residents in suitable foster homes, those to be assisted and the method thereof to be defined in a mutually approved interdepartmental agreement. [1959 c 28 § 72.33.080. Prior: 1957 c 102 § 8.]

Department of social and health services: Chapter 43.20A.

72.33.090 Seal of state school—Use. The department shall provide the superintendent with an official and appropriate seal upon which shall be inscribed the statutory name of the state school and the words "State of Washington" shall appear thereon. The superintendent shall affix the seal of the state school to any notice, order, or other instrument required to be issued by him. [1959 c 28 § 72.33.090. Prior: 1957 c 102 § 9.]

72.33.100 Superintendent as witness in judicial proceedings—Depositions—Exempt from jury service. The superintendent shall not be required to attend any court as a witness in a civil or juvenile court proceeding but parties desiring his testimony may take and use his deposition; nor shall he be required to attend as a witness in any criminal case unless the court before which his testimony shall be desired shall, upon being satisfied of the materiality of his testimony, require his attendance; and he shall be exempted from jury service. [1959 c 28 § 72.33.100. Prior: 1957 c 102 § 10.]

72.33.110 Gifts to state school—Acceptance, use, record. The superintendent is authorized to receive and

accept from any person, organization or estate, gifts of money or personal property on behalf of the state school under his charge, or the residents therein, and to use such gifts for the purposes specified by the donor where such use is consistent with law. In the absence of a specified purpose the superintendent shall use such money or personal property for the benefit of the state school or for the general benefit of the residents therein. The superintendent shall keep an accurate record of the amount or kind of gift, the date received, manner expended, and the name and address of the donor. Any increase resulting from such gift may be used for the same purpose as the original gift. [1959 c 28 § 72.33.110. Prior: 1957 c 102 § 11.]

72.33.125 Services or facilities as alternative to state residential schools—Application—Determination of eligibility. (1) In order to provide ongoing points of contact with the mentally deficient and/or physically deficient individual and his family so that they may have a place of entry for state services and return to the community as the need may appear; to provide a link between those individuals and services of the community and state operated services so that the individuals with mental or physical deficiencies and their families may have access to the facilities best suited to them throughout the life of the individual; to offer viable alternatives to state residential school admission; and to encourage the placement of persons from state residential schools, the secretary of social and health services or his designee, pursuant to rules and regulations of the department, shall receive applications of persons for care, treatment, hospitalization, support, training, or rehabilitation provided by state programs or services for the mentally and/or physically deficient. Written applications shall be submitted in accordance with the following requirements:

(a) In the case of a minor person, the application shall be made by his parents or by the parent, guardian, person or agency legally entitled to custody, which application shall be in the form and manner required by the department; and

(b) In the case of an adult person, the application shall be made by such person, by his parents, or by a parent, guardian, or agency legally entitled to custody, which application shall be in the form and manner required by the department.

(2) Upon receipt of the written application the secretary shall determine if the individual to receive services has a mental deficiency and/or a physical deficiency as defined in RCW 72.33.020 qualifying him for services. In order to determine eligibility for services, the secretary may require a supporting affidavit of a physician or a clinical psychologist, or one of each profession, certifying that the individual is mentally and/or physically deficient as herein defined.

(3) After determination of eligibility because of mental and/or physical deficiency, the secretary shall determine the necessary services to be provided for the individual. Individuals may be temporarily admitted, for a period not to exceed thirty days, to departmental residential facilities for observation prior to determination

of needed services, where such observation is necessary to determine the extent and necessity of services to be provided. [1975 1st ex.s. c 246 § 2.]

72.33.130 Admission to suitable facility—Commitment by court. In the event a minor person under the age of eighteen years shall be found under the juvenile court law to be "dependent" or "delinquent" and mentally and/or physically deficient as herein defined, and that placement for care, custody, treatment, or education in a state school is to the minor's welfare, the secretary shall receive such minor upon commitment from the superior court pursuant to such terms and conditions as may therein be set forth for placement by the department in a facility most appropriate to his needs, subject to the provisions of RCW 72.33.070. [1975 1st ex.s. c 246 § 3; 1959 c 28 § 72.33.130. Prior: 1957 c 102 § 13. (i) 1913 c 173 § 2; RRS § 4660. (ii) 1937 c 10 § 9; RRS § 4679-9.]

Juvenile courts and juvenile delinquents: Title 13 RCW.

72.33.140 Withdrawal of resident from school or other residential placement—Placement, discharge basis. Subject to the provisions of RCW 72.33.150, as now or hereafter amended, no person under the age of eighteen years residing at a state school or in other residential placement pursuant to RCW 72.33.125 shall be retained therein for more than forty-eight hours after the parent entitled to custody or the guardian has given notice of their desire to remove such person from said state school or facility unless held pursuant to court order. Subject to the provisions of RCW 72.33.150 as now or hereafter amended, no person over eighteen years residing at a state school or in other residential placement pursuant to RCW 72.33.130 shall be retained therein for more than forty-eight hours after said person, his guardian, or his court appointed personal representative entitled to custody has given notice of desire to remove such person unless held pursuant to court order.

Such notice shall indicate to the superintendent or other person in charge the proposed plan of future residence of such person and whether placement or discharge is desired. In the event withdrawal is upon a placement basis, it shall be understood that readmission will be available to the former resident if it is found necessary to return such person to the school. In the event withdrawal is upon a discharge basis it shall be understood that application for readmission shall be considered as if it were a first application. [1975 1st ex.s. c 246 § 4; 1959 c 28 § 72.33.140. Prior: 1957 c 102 § 14. (i) 1913 c 173 § 10; RRS § 4668. (ii) 1937 c 10 § 20; RRS § 4679-20.]

72.33.150 Preventing withdrawal from residential custody—Procedure. Whenever it is deemed not to the best interests of a resident that he should be removed from residential custody, the secretary shall promptly file a petition in the probate department of the superior court of the county of residence of such person setting forth his reasons why continued residence is indicated.

If a petition is filed the department may continue its custody over the individual for a period not to exceed

five days pending disposition of the petition or preliminary hearing as to temporary custody.

Upon due notice and hearing, the court shall resolve the matter and in the event the person is found in need of further residential care the court shall so order and shall name a fit and proper person to serve as guardian or other personal representative over the resident pursuant to state law if none has been previously named. [1975 1st ex.s. c 246 § 5; 1959 c 28 § 72.33.150. Prior: 1957 c 102 § 15. (i) 1913 c 173 § 8; RRS § 4666. (ii) 1937 c 10 § 14; RRS § 4679-14.]

72.33.160 Return of resident to community—Placement. Whenever in the judgment of the secretary, the treatment and training of any resident of a state residential school has progressed to the point that it is deemed advisable to return such resident to the community, the secretary may grant placement on such terms and conditions as he may deem advisable after reasonable notice to and consultation with the resident, and with any available parent, guardian, or other court appointed personal representative of such person.

The department of social and health services shall periodically evaluate at reasonable intervals the adjustment of the resident to the placement to determine whether the resident should be continued in the placement or returned to the institution or given a different placement. [1975 1st ex.s. c 246 § 6; 1969 ex.s. c 166 § 4; 1959 c 28 § 72.33.160. Prior: 1957 c 102 § 16.]

Effective date—1969 ex.s. c 166: July 1, 1969, see note following RCW 72.33.830.

72.33.165 Payments for nonresidential services—Authorized. The secretary of social and health services is authorized to make payments for nonresidential services which exceed the cost of caring for an average individual at home, and which are reasonably necessary for the care, treatment, maintenance, support, and training of mentally and/or physically deficient persons, upon application pursuant to RCW 72.33.125. The department shall adopt rules and regulations determining the extent and type of care and training for which the department will pay all or a portion of the costs. [1975 1st ex.s. c 246 § 11.]

72.33.170 Discharge procedure. Whenever in the judgment of the secretary a person no longer needs the services provided by the department for mentally and/or physically deficient persons, he may be discharged from services after reasonable notice and consultation with the person to be discharged and any available parent, guardian, or other court appointed personal representative. [1975 1st ex.s. c 246 § 7; 1959 c 28 § 72.33.170. Prior: 1957 c 102 § 17.]

72.33.180 Personal property of resident—Superintendent as custodian—Limitations—Judicial proceedings to recover. The superintendent of a state school shall serve as custodian without compensation of such personal property of a resident as may be located at the school, including moneys deposited with the superintendent for the benefit of such resident. As such custodian,

the superintendent shall have authority to disburse moneys from the resident's fund for the following purposes and subject to the following limitations:

(1) Subject to specific instructions by a donor of money to the superintendent for the benefit of a resident, the superintendent may disburse any of the funds belonging to a resident for such personal needs of such resident as the superintendent may deem proper and necessary.

(2) The superintendent may pay to the department of social and health services for the costs of care, support, maintenance, treatment, hospitalization, medical care and rehabilitation of a resident from the resident's fund when such fund exceeds two hundred dollars, to the extent of any finding of financial responsibility served upon the superintendent after such findings shall have become final except, reduction of such funds to another amount may be made where necessary to qualify such person for eligibility in any public or private program for the care, treatment, hospitalization, support, training, or rehabilitation of such person, and to qualify such person for the payment of the liabilities from any public or private program providing benefits for the payment of all or a portion of the costs of care, treatment, hospitalization, support, training, or rehabilitation: *Provided*, That if such resident does not have a guardian, parent, spouse, or other person acting in a representative capacity, upon whom notice and findings of financial responsibility have been served then the superintendent shall not make payments to the department of social and health services as above provided, until a guardian has been appointed by the court, and the time for the appeal of findings of financial responsibility as provided in RCW 72.33.670 shall not commence to run until the appointment of such guardian and the service upon him of notice and findings of financial responsibility.

(3) When a resident is granted placement, the superintendent shall deliver to said resident, or the parent, guardian, or agency legally responsible for the resident, all or such portion of the funds of which the superintendent is custodian as above defined, or other property belonging to the resident, as the superintendent may deem necessary to the resident's welfare, and the superintendent may during such placement deliver to the former resident such additional property or funds belonging to the resident as the superintendent may from time to time deem proper. When the conditions of placement have been fully satisfied and the resident is discharged, the superintendent shall deliver to such resident, or the parent, person, or agency legally responsible for the resident, all funds or other property belonging to the resident remaining in his possession as custodian.

(4) All funds held by the superintendent as custodian may be deposited in a single fund, the receipts and expenditures therefrom to be accurately accounted for by him: *Provided*, That all interest accruing from, or as a result of the deposit of such moneys in a single fund shall be used by the superintendent for the general welfare of all the residents of such institution: *Provided, further*, That when the personal accounts of residents exceed three hundred dollars, the interest accruing therefrom shall be credited to the personal accounts of

such residents. All such expenditures shall be subject to the duty of accounting provided for in this section.

(5) The appointment of a guardian for the estate of such resident shall terminate the superintendent's authority as custodian of a resident's funds upon receipt by the superintendent of a certified copy of letters of guardianship. Upon the guardian's request, the superintendent shall immediately forward to such guardian any funds or other property of the resident remaining in the superintendent's possession together with a full and final accounting of all receipts and expenditures made therefrom.

(6) Upon receipt of a written request from the superintendent stating that a designated individual is a resident of the state school for which he has administrative responsibility and that such resident has no legally appointed guardian of his estate, any person, bank, corporation, or agency having possession of any money, bank accounts, or choses in action owned by such resident, shall, if the amount does not exceed two hundred dollars, deliver the same to the superintendent as custodian and mail written notice thereof to such resident at the state school. The receipt of the superintendent shall constitute full and complete acquittance for such payment and the person, bank, corporation, or agency making such payment shall not be liable to the resident or his legal representatives. All funds so received by the superintendent shall be duly deposited by him as custodian in the resident's fund to the personal account of such resident.

If any proceeding is brought in any court to recover property so delivered, the attorney general shall defend the same without cost to the person, bank, corporation, or agency effecting such delivery to the superintendent, and the state shall indemnify such person, bank, corporation, or agency against any judgment rendered as a result of such proceeding. [1971 ex.s. c 118 § 1; 1970 ex.s. c 75 § 2; 1967 c 141 § 10; 1959 c 61 § 1; 1959 c 28 § 72.33.180. Prior: 1957 c 102 § 18.]

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

72.33.190 Contracts with United States for admission to state schools. The department shall have the power in the name of the state, to enter into contracts with any duly authorized representative of the United States of America, or its territories, for the admission to state schools for the care, treatment, training or education of persons requiring the same, at the expense of the United States of America, and contracts may provide for the separate or joint maintenance, care, treatment, training or education of such persons so admitted, which contracts shall provide that all payments due the state of Washington from the United States of America for services rendered thereunder shall be paid to the department and transmitted to the state treasurer for deposit in the general fund. [1959 c 28 § 72.33.190. Prior: 1957 c 102 § 19.]

72.33.200 Department not responsible until person is resident of school or other state operated facility. The

department shall not be responsible for the support, welfare or actions of any person until such person is admitted to a residential school or other state operated facility for services pursuant to RCW 72.33.125. [1975 1st ex.s. c 246 § 8; 1959 c 28 § 72.33.200. Prior: 1957 c 102 § 20.]

72.33.210 Resident to be provided with clothing—
Cost. When not otherwise provided, the state school shall provide each resident with suitable clothing, the actual cost of which shall be a charge against the parents, guardian or estate of such resident; and in the event that such parent, guardian or estate is unable or is insufficient to provide or pay for such clothing, the same shall be provided by the state. [1959 c 28 § 72.33.210. Prior: 1957 c 102 § 21. (i) 1913 c 173 § 12; RRS § 4670. (ii) 1937 c 10 § 17; RRS § 4679-17.]

72.33.220 Transfer of resident between schools and other residential placements. Whenever it appears to serve the best interests of the resident concerned, the department, after consultation as provided for in RCW 72.33.160, shall have authority to transfer such resident between state schools and other residential placements conducting or having access to the type of program contemplated by this chapter. [1975 1st ex.s. c 246 § 9; 1959 c 28 § 72.33.220. Prior: 1957 c 102 § 22.]

72.33.230 Chapter does not affect parental or other rights. This chapter shall not be construed to deprive the parent or parents of any parental rights with relation to a child residing in a state school, except as provided herein for the orderly operation of such schools, nor any rights granted a co-custodian pursuant to the provisions of chapter 26.40 RCW. [1959 c 28 § 72.33.230. Prior: 1957 c 102 § 23.]

Parental successors: RCW 72.33.500.

72.33.240 Review of secretary's decision—
Court review. Any parent or guardian feeling aggrieved by an adverse decision pertaining to admission, placement, or discharge of his ward may apply to the secretary in writing within thirty days of notification of the decision for a review and reconsideration of the decision. An administrative hearing shall be held within ten days from the date of receipt of the written request for review. In the event of an unfavorable ruling by the secretary, such parent or guardian may institute proceedings in the superior court of the state of Washington in the county of residence of such parent or guardian, otherwise in Thurston county, and have such decision reviewed and its correctness, reasonableness, and lawfulness decided in an appeal heard as in initial proceeding on an original application. Said parent or guardian shall have the right to appeal from the decision of the superior court to the supreme court or the court of appeals of the state of Washington, as in civil cases. [1975 1st ex.s. c 246 § 10; 1971 c 81 § 135; 1959 c 28 § 72.33.240. Prior: 1957 c 102 § 24.]

72.33.260 Escape of resident—
Penalty for assisting. Any person who procures the escape of any resident

of any school for mental defectives to which such resident has been lawfully committed, or who advises, conveys at, aids, or assists in such escape or conceals any such escape, is guilty of a felony and shall be punished by imprisonment in a state penal institution for a term of not more than five years or by a fine of not more than five hundred dollars or by both imprisonment and fine. [1959 c 28 § 72.33.260; 1957 c 225 § 1, part; 1949 c 198 § 20; Rem. Supp. 1949 § 6953-20. Formerly RCW 71.12.620.]

Assisting escape of inmate of mental institution or custodial school: RCW 9.31.100.

72.33.500 Parental successor for resident of state school—
Appointment authorized. The natural or adoptive parents, or the survivor of them, of a person who is, or may become, a resident of a state school may appoint at any time a parental successor for such person. The appointment shall be effective upon the death of the surviving parent and shall be for the period the person actually resides at or is on placement from a state school. [1959 c 126 § 1.]

*Chapter does not affect parental or other rights: RCW 72.33.230.
Handicapped children: Chapter 26.40 RCW.*

72.33.510 Parental successor for resident of state school—
Who may serve. A parental successor may be an individual, whether related or not to the person who is or may become a resident of a state school; a bank with a trust department, acting through its trust department; or a church, acting through the incumbent of a position to be indicated in the instrument designating or the order appointing the parental successor.

A minor may be named or appointed as a parental successor, but he may actually serve only after reaching the age of majority. [1959 c 126 § 2.]

72.33.520 Parental successor for resident of state school—
Methods of appointment. A parental successor may be designated by an acknowledged document in a form to be prescribed by the department, by the last will and testament of the person or persons having the right to make the nomination, or by formal appointment by the superior court in the county in which the petitioner, or at least one of several petitioners, reside.

Court appointment shall be by petition heard ex parte as a probate matter without notice, unless required by the court. Any designation or appointment of a parental successor may also designate or appoint one or more eligible persons or organizations to serve as successors to the first named parental successor in the event of the unwillingness, inability, incapacity, or resignation of the first parental successor. [1959 c 126 § 3.]

72.33.530 Parental successor for resident of state school—
Evidence of appointment to be served upon superintendent. In the event the appointment is by court order or will, a copy of the court order, or of the will together with a copy of the order admitting the will to probate, certified by the clerk of the appropriate court, shall be furnished by an interested party to the superintendent of the state school wherein the person concerned

resides or may reside. No appointment of a parental successor shall be binding on a superintendent until a properly executed copy of an authorized document or a certified copy of the will, together with a certified copy of the order admitting the will to probate, or a certified copy of the court appointment has been served upon the superintendent. [1959 c 126 § 4.]

72.33.540 Parental successor for resident of state school—Written consent. The written consent of the person or organization intended to serve as the parental successor and of each named successor thereto, if any, shall accompany the petition for court appointment. The consent or consents shall be forwarded to the superintendent or his representative with the executed copy of an authorized document, or with the certified copy of the will and of the order admitting the will to probate, if appointment is by document or will, but the consent or consents need not be forwarded in the event of a court appointment. [1959 c 126 § 5.]

72.33.550 Parental successor for resident of state school—Rights and privileges of parental successor. The parental successor, during the period he is actually serving, shall have the right to exercise an active and continuing interest in, and to be informed concerning the health, education, recreation, and general welfare of the person for whom he is named parental successor. He shall be permitted to take the person from the state school on visits, trips, or vacations the same as a parent.

The superintendent shall inform, advise, and consult with the parental successor, when actually serving, regarding the person for whom the parental successor was named, as though he were the natural parent of the person, on all matters pertaining to his health, education, recreation, general welfare, and including but not limited to matters of surgery, placement and discharge.

A parental successor shall have the rights and privileges conferred by this section although the person for whom he is named parental successor is on placement from a state school and not physically resident therein. [1959 c 126 § 6.]

72.33.560 Parental successor for resident of state school—Successor's whereabouts—Emergencies—Decisions concerning resident's welfare. During the time that a person is acting as a parental successor, he shall keep the superintendent informed of his whereabouts so that he can be contacted in case of emergency.

Any bank or church appointed to act as a parental successor shall keep the superintendent informed of the name and address of the individual who should be contacted in case of emergency.

During the period a parental successor is acting, if, after reasonable effort on the part of the superintendent, the parental successor cannot be reached, the superintendent shall be free to make decisions in all matters for the best interest of the person for whom the parental successor was named. [1959 c 126 § 7.]

72.33.570 Parental successor for resident of state school—Termination of designation or appointment.

Any designation or appointment of a parental successor is subject to revocation at any time, in the first instance by the person who made the designation and in the case of appointment by will or formal appointment, by the court in which the will was probated or the formal appointment was made. A person or organization named as parental successor may renounce or resign at any time.

No revocation, renunciation, resignation, death or state of incapacity will be binding on a superintendent until he has been notified in writing thereof. [1959 c 126 § 8.]

72.33.580 Parental successor for resident of state school—Successor's responsibilities and duties limited. A parental successor shall have no financial responsibility to the state of Washington for the person for whom he is named, and he shall have no obligatory duties or responsibilities except as specifically set forth in this act. [1959 c 126 § 9.]

72.33.590 Parental successor for resident of state school—Construction—Effect on other laws. It is specifically intended that the provisions of this act shall be available for the benefit of persons who are now resident at or on placement from a state school.

This act shall not repeal, amend or modify any law relating to intestate succession or relating to guardians of the person or of the estate of an individual. In the event of the appointment of the guardian of the person, the rights of the guardian will supersede and abrogate the rights of the parental successor of the person for whom a guardian of the person has been appointed, for so long as the appointment of the guardian of the person is effective. [1959 c 126 § 10.]

72.33.650 Financial responsibility for costs of care, support and treatment of residents—Declaration of purpose. The purpose of RCW 72.33.650 through 72.33.700 is to place financial responsibility for cost of care, support and treatment upon those residents of state residential schools who possess assets over and above the minimal amount required to be retained for personal use; to provide procedures for establishing such liability and the monthly rate thereof, and the process for appeal therefrom to the director of the department of institutions and the courts by any person deemed aggrieved thereby. [1967 c 141 § 1.]

Effective date—1967 c 141: "This 1967 amendatory act shall become effective July 1, 1967." [1967 c 141 § 13.] This applies to RCW 72.33.650–72.33.700 and the 1967 amendment to RCW 72.33.180.

72.33.655 Financial responsibility for costs of care, support and treatment of residents—Liability of estates of admitted persons for costs—Limitation. The estates of all mentally or physically deficient persons who have been admitted to the state residential schools listed in RCW 72.33.030 either by application of their parents or guardian or by commitment of court, or who may hereafter be admitted or committed to such institutions, shall be liable for their per capita costs of care, support and treatment: *Provided*, That the estate funds

may not be reduced as a result of such liability below an amount as set forth in RCW 72.33.180. [1971 ex.s. c 118 § 2; 1967 c 141 § 2.]

72.33.660 Financial responsibility for costs of care, support and treatment of residents—Ascertainment of charges—"Average per capita cost"—Computation—Collection. The charges for care, support and treatment as provided in RCW 72.33.655 shall be based on the average monthly per capita costs of operating such residential schools for the previous calendar year taking into consideration all expenses of institutional operation, maintenance and repair, salaries and wages, equipment and supplies: *Provided*, That all expenses directly related to the cost of education, vocational training and capital construction shall be excluded from the computation of the average per capita cost. The average per capita cost shall be computed by the department of institutions annually and adopted as a rule of the department in accordance with the provisions of chapter 42.32 RCW and of chapter 34.04 RCW. The department of institutions shall be charged with the duty of collection of such charges which may be enforced by civil action instituted by the attorney general within or without the state. [1967 c 141 § 3.]

72.33.665 Financial responsibility for costs of care, support and treatment of residents—Investigation and determination of assets of estates of residents—Ability to pay—Exemptions. The department of social and health services shall investigate and determine the assets of the estates of each resident of a state residential school and the ability of each such estate to pay all, or any portion of, the average monthly charge for care, support and treatment at a state residential school as determined by the procedure set forth in RCW 72.33.660: *Provided*, That the sum as set forth in RCW 72.33.180 shall be retained by the estate of the resident at all times for such personal needs as may arise: *Provided further*, That where any person other than a resident or the guardian of his estate deposits funds so that the depositor and a resident become joint tenants with the right of survivorship, such funds shall not be considered part of the resident's estate so long as the resident is not the sole survivor among such joint tenants. [1971 ex.s. c 118 § 3; 1967 c 141 § 4.]

72.33.670 Financial responsibility for costs of care, support and treatment of residents—Notice and finding of financial responsibility—Service—Appeal—Hearing. In all cases where a determination is made that the estate of a mentally or physically deficient person who resides at a state residential school is able to pay all or any portion of the monthly charges, a notice and finding of financial responsibility shall be personally served on the guardian of the resident's estate, or if no guardian has been appointed then to his spouse or parents or other person acting in a representative capacity and having property in his possession belonging to a resident of a state residential school and the superintendent of the state residential school. The notice shall set forth the amount the department has determined that such

estate is able to pay per month, not to exceed the monthly charge as fixed in accordance with RCW 72.33.660, and the responsibility for payment to the department of institutions shall commence thirty days after personal service of such notice and finding of responsibility. An appeal from the determination of responsibility may be made to the director by the guardian of the resident's estate, or if no guardian has been appointed then by his spouse, parent or parents or other person acting in a representative capacity and having property in his possession belonging to a resident of a state residential school, within such thirty day period upon written notice of appeal being served upon the director by registered or certified mail. If no appeal is taken, the notice and finding of responsibility shall become final. If an appeal is taken, the execution of notice and finding of responsibility shall be stayed pending the decision of such appeal. Appeals may be heard in any county seat most convenient to the appellant. The hearing of appeals may be presided over by a hearing examiner and the proceedings shall be recorded either manually or by a mechanical device. Any such appeal shall be a "contested case" as defined in RCW 34.04-.010, and practice and procedure shall be governed by the provisions of RCW 72.33.650 through 72.33.700, the rules and regulations of the department of institutions, and the Administrative Procedure Act, chapter 34.04 RCW. [1970 ex.s. c 75 § 1; 1967 c 141 § 5.]

72.33.680 Financial responsibility for costs of care, support and treatment of residents—Modification or vacation of finding of financial responsibility. The director, upon application of the guardian of the estate of the resident, and after investigation, or upon investigation without application, may, if satisfied of the financial ability or inability of such person to make payments in accordance with the original finding of responsibility, modify or vacate such original finding of responsibility, and enter a new finding of responsibility. The director's determination to modify or vacate findings of responsibility shall be served and be appealable in the same manner and in accordance with the same procedure for appeals of original findings of responsibility. [1967 c 141 § 7.]

72.33.685 Financial responsibility for costs of care, support and treatment of residents—Charges payable in advance. The charges for care, support, maintenance and treatment of mentally or physically deficient persons at state residential schools as provided by RCW 72.33.650 through 72.33.700 shall be payable in advance on the first day of each and every month to the department of institutions. [1967 c 141 § 8.]

72.33.690 Financial responsibility for costs of care, support and treatment of residents—Reimbursement from persons liable not prohibited or prevented—Placement outside institution—Death of resident, liability of estate. The provisions of RCW 72.33.650 through 72.33.700 shall not be construed to prohibit or prevent the department of institutions from obtaining reimbursement from any person liable under RCW

72.33.650 through 72.33.700 for payment of the full amount of the accrued per capita cost from any property acquired by gift, devise or bequest subsequent to and regardless of the initial findings of responsibility under RCW 72.33.670: *Provided*, That the estate of any resident of a state residential school shall not be liable for such reimbursement subsequent to his placement out of the state residential school: *Provided further*, That upon the death of any person while a resident in a state residential school his estate shall become liable to the same extent as the resident's liability on the date of death. [1967 c 141 § 9.]

72.33.695 Financial responsibility for costs of care, support and treatment of residents—Liabilities created apply to care, support and treatment after July 1, 1967. The liabilities created by RCW 72.33.650 through 72.33.700 shall apply to the care, support and treatment occurring after July 1, 1967. [1967 c 141 § 11.]

72.33.700 Financial responsibility for costs of care, support and treatment of residents—Discretionary allowance of increased amount in resident's fund. Notwithstanding any other provision of RCW 72.33.650 through 72.33.700, the director may, if in his discretion any resident of a state residential school can be discharged more rapidly therefrom and assimilated into a community, keep an amount not exceeding five thousand dollars in the resident's fund for such resident and such resident shall not thereafter be liable thereon for per capita costs of care, support and treatment as provided for in RCW 72.33.655. [1967 c 141 § 12.]

72.33.800 Agreements to pay others for care, treatment, maintenance of mentally retarded or developmentally disabled—Authorized—Definitions. The secretary of the department of social and health services is hereby authorized to enter into agreements with any person, or with any person, corporation or association operating a day training center or group training home or a combination thereof approved by the department, for the payment of all, or a portion of the cost of the care, treatment, maintenance, support and training of mentally retarded or other developmentally disabled persons.

For the purpose of RCW 72.33.800 through 72.33.820, as now or hereafter amended, the terms "day training center" and "group training home" shall have the following meanings:

(1) "Day training center" shall mean a facility equipped, supervised, managed and operated at least three days per week by any person, association or corporation on a nonprofit basis for the day-care, treatment, training and maintenance of mentally retarded or other developmentally disabled persons, and approved in accordance with RCW 72.33.800 through 72.33.820, as now or hereafter amended, and the standards of the department of social and health services as set forth in the rules and regulations promulgated by the secretary.

(2) "Group training home" shall mean a facility equipped, supervised, managed and operated on a full time basis by any person, association or corporation on a

nonprofit basis for the full time care, treatment, training and maintenance of mentally retarded or other developmentally disabled persons, and approved in accordance with RCW 72.33.800 through 72.33.820, as now or hereafter amended, and the standards of the department of social and health services as set forth in rules and regulations promulgated by the secretary. [1974 ex.s. c 71 § 9; 1965 c 34 § 1; 1961 c 251 § 1.]

Severability—1974 ex.s. c 71: See note following RCW 71.20.015. *State and local services for mentally retarded and developmentally disabled: Chapter 71.20 RCW.*

72.33.805 Agreements to pay others for care, treatment, maintenance of mentally retarded or developmentally disabled—Payments by department are supplemental to payments made by parent or guardian—Limitation on amount. All payments made by the secretary of the department of social and health services pursuant to RCW 72.33.800 through 72.33.820, as now or hereafter amended, shall be, insofar as possible, supplementary to payments to be made to a day training center or group training home or combination thereof by the parents or guardians of such mentally retarded or other developmentally disabled persons. Payments made by the secretary in accordance with the authority of RCW 72.33.800 through 72.33.820, as now or hereafter amended, shall not exceed actual costs for the care, treatment, support, maintenance and training of any mentally retarded or developmentally disabled person whether at a day training center or group training home or combination thereof or otherwise. [1974 ex.s. c 71 § 10; 1965 c 34 § 2; 1961 c 251 § 2.]

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

72.33.810 Agreements to pay others for care, treatment, maintenance of mentally retarded or developmentally disabled—Certification of facilities. Any person, corporation, or association may make application to the secretary of the department of social and health services for approval and certification of the applicant's facility as a day training center, or a group training home for mentally retarded or developmentally disabled persons or a combination of both. The secretary may either grant or deny certification or revoke certification previously granted after investigation of the applicant's facilities, to ascertain whether or not such facilities are adequate for the health, safety and the care, treatment, maintenance, training and support of mentally retarded or developmentally disabled persons, in accordance with standards as set forth in rules and regulations promulgated by the secretary. [1974 ex.s. c 71 § 11; 1961 c 251 § 3.]

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

72.33.815 Agreements to pay others for care, treatment, maintenance of mentally retarded or developmentally disabled—Application by parent or guardian for payments by department—Investigation—Acceptance or rejection—Limitation on amount. The parent or guardian of a retarded or developmentally disabled person may make application to the secretary of social

and health services for the payment of all, or a portion of, the monthly cost of care, treatment, maintenance, support and training of such mentally retarded or developmentally disabled person, whether in a day training center or a group training home or a combination thereof or otherwise, approved by the department. The secretary, after investigation, may accept or reject the application, and, if accepted, shall determine the extent and type of care and training and the amount which the department will pay, based upon the needs of such mentally retarded or developmentally disabled person and the ability of the parent or the guardian to pay, or contribute to the payment of the monthly cost of such care and training. The secretary, may, upon application of such parent or guardian, after investigation of the ability or inability of such persons to pay, or without application being made, modify the amount of the monthly payments to be paid by the department of social and health services for the care and training of such mentally retarded or developmentally disabled persons whether at a day training center or group training home or combination thereof or otherwise. [1974 ex.s. c 71 § 12; 1965 c 34 § 3; 1961 c 251 § 4.]

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

72.33.820 Agreements to pay others for care, maintenance and training of persons acceptable for admission to residential school—Facilities to be nonsectarian. A day training center and a group training home as used in RCW 72.33.800 through 72.33.815 shall be a nonsectarian day training center and a nonsectarian group training home. [1961 c 251 § 5.]

72.33.825 Purchase of products and services provided by group training homes and day training centers. See RCW 43.19.520–43.19.530.

72.33.830 Residents of residential schools placed in group homes—Payment of costs of care, support and training authorized. The department of institutions is authorized to pay for all or a portion of the costs of care, support and training of residents of state residential schools for the mentally and/or physically deficient persons who are placed in group homes, as hereinafter provided. "Mental deficiency" or "physical deficiency" for the purposes of RCW 72.33.160, and 72.33.830 through 72.33.850 shall have the same meaning as those terms are defined in RCW 72.33.020 as now or hereafter amended. [1969 ex.s. c 166 § 1.]

Effective date—1969 ex.s. c 166: "This act shall become effective on July 1, 1969." [1969 ex.s. c 166 § 5.] This applies to RCW 72.33.830–72.33.850, and to the 1969 amendment to RCW 72.33.160.

"Group training home" defined: RCW 72.33.800.

72.33.840 Residents of residential schools placed in group homes—Payments by department are supplemental to payments from estate or other resources of resident—Direct payments authorized. All payments made by the department of institutions in accordance with RCW 72.33.830 shall, insofar as reasonably possible, be supplementary to payments to be made for the costs of care, support and training in a group home by

the estate of such resident of the state residential school, or from any resource which such resident may have, or become entitled to, from any public, private, federal or state agency. Payments by the department of institutions under RCW 72.33.160, and 72.33.830 through 72.33.850 may, in its discretion, be paid directly to group homes, or to counties having created community boards for mental retardation services in accordance with the provisions of chapter 110, Laws of 1967 ex. sess. [1969 ex.s. c 166 § 2.]

72.33.850 Residents of residential schools placed in group homes—Rules and regulations. The department of institutions shall promulgate rules and regulations concerning the eligibility of residents of state schools for placement in group homes under the authority of RCW 72.33.160, and 72.33.830 through 72.33.850, determination of ability of such persons or their estates to pay all or a portion of the cost of care, support and training, the manner and method of licensing or certification and inspection and approval of such group homes for placement under RCW 72.33.160, and 72.33.830 through 72.33.850 and procedures for the payment of costs of care, maintenance and training in group homes.

Such rules and regulations shall include standards for care, maintenance and training to be met by such group homes. In addition, the department of institutions shall be responsible for coordinating state activities and resources relating to group home placements to the end that state and local resources will be efficiently expended and an effective community-based group home program may be created. [1969 ex.s. c 166 § 3.]

72.33.860 Death of resident, payment of funeral expenses—Limitation. The secretary of the department of social and health services or his designee may, upon the death of a resident, supplement such funds as were in the resident's account at the time of his death to provide funeral and burial expenses for such deceased resident: *Provided*, That the total of the resident's account funds plus the state supplementation which may be used for funeral and burial purposes shall not exceed six hundred fifty dollars. [1971 ex.s. c 118 § 4.]

72.33.900 Chapter to be liberally construed. The provisions of this chapter shall be liberally construed so that persons who are in need of care, treatment, training or education in a state school by reason of their exceptional mental and/or physical qualities shall receive the benefit of such residential facilities while still preserving all rights and privileges guaranteed the person by the Constitution of the United States of America and the state of Washington. [1959 c 28 § 72.33.900. Prior: 1957 c 102 § 25. Formerly RCW 72.33.250.]

Chapter 72.36 SOLDIERS' AND VETERANS' HOMES

Sections

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 72.36.040 Colony established—Who may be admitted (as amended by 1973 1st ex.s. c 154 § 102).
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Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

72.36.010 Establishment of soldiers' home. There is established at Orting, Pierce county, an institution which shall be known as the Washington soldiers' home. [1959 c 28 § 72.36.010. Prior: 1901 c 167 § 1; 1890 p 269 § 1; RRS § 10727.]

72.36.020 Superintendent—Appointment. The director shall appoint a superintendent, who, with the consent of the director, may be styled "commandant of the home". The superintendent shall have entire management and control of the institution under the rules and regulations adopted by the department. [1959 c 28 § 72.36.020. Prior: 1890 p 271 § 7; RRS § 10728.]

Superintendent, general provisions: RCW 72.01.060.

72.36.030 Who may be admitted. All honorably discharged soldiers, sailors and marines who have served the United States government in any of its wars, and members of the state militia disabled while in the line of duty, may be admitted to the state soldiers' home at Orting under such rules and regulations as may be adopted by the department: *Provided*, That such applicants have been actual bona fide citizens of this state at the time of their application, and are indigent and unable to support themselves: *Provided, further*, That sufficient facilities and resources are available to accommodate such applicant. [1975 c 13 § 1; 1959 c 28 § 72.36.030. Prior: 1915 c 106 § 1; 1911 c 124 § 1; 1905 c 152 § 1; 1901 c 167 § 2; 1890 p 270 § 2; RRS § 10729.]

72.36.040 Colony established—Who may be admitted (as amended by 1973 c 101 § 1). There is hereby established what shall be known as the "Colony of the State Soldiers' Home." All of the following persons who reside within the limits of Orting school district and have been actual bona fide citizens of this state for a period of three years at the time of their application and who have personal property of less than one thousand dollars and/or a monthly income insufficient to meet their needs as determined by the standards of the department of social and health services, may be admitted to membership in said colony under such rules and regulations as may be adopted by the department.

(1) All honorably discharged veterans who have served in the armed forces of the United States during wartime, members of the state militia disabled while in the line of duty, and their respective spouses with whom they have lived for three years prior to application for membership in said colony. Also, the spouse of a veteran or disabled member of the state militia, who is eligible for membership in said colony, if such spouse is the widow or widower of a veteran who was a member of a soldiers' home or colony in this state or entitled to admission

thereto at the time of death: *Provided*, That such veterans and members of the state militia shall, while they are members of said colony, be living with their said spouses.

(2) The widows or widowers of all veterans who were members of a soldiers' home or colony in this state or entitled to admission thereto at the time of death, and the widows or widowers of all veterans who would have been entitled to admission to a soldiers' home or colony in this state at the time of death but for the fact that they were not indigent and unable to support themselves and families, which widows or widowers have since the death of their said spouses become indigent and unable to earn a support for themselves: *Provided*, That such widows or widowers are not less than fifty years of age and have not been married since the decease of their said spouses to any person not a member of a soldiers' home or colony in this state or entitled to admission thereto. Any resident of said colony may be admitted to the hospital at the state soldiers' home for temporary care when requiring hospital treatment. [1973 c 101 § 1; 1959 c 235 § 1; 1959 c 28 § 72.36.040. Prior: 1947 c 190 § 1; 1925 ex.s. c 74 § 1; 1915 c 106 § 2; Rem. Supp. 1947 § 10730.]

72.36.040 Colony established—Who may be admitted (as amended by 1973 1st ex.s. c 154 § 102). There is hereby established what shall be known as the "Colony of the State Soldiers' Home." All of the following persons who reside within the limits of Orting precinct and have been actual bona fide citizens of this state for a period of three years at the time of their application and who have personal property of less than one thousand dollars and/or a monthly income insufficient to meet their needs as determined by the standards of the county welfare department, may be admitted to membership in said colony under such rules and regulations as may be adopted by the department.

(1) All honorably discharged soldiers, sailors and marines, who have served the United States government in any of its wars, and members of the state militia disabled while in the line of duty, and their spouses, who were married and living with their spouses for five years prior to application to membership in said colony or who, since said date, have married widows of soldiers or widowers of soldiers who were members of a soldiers' home or colony in this state or entitled to admission thereto at the time of death: *Provided*, That such soldiers, sailors, and marines and members of the state militia shall, while they are members of said colony, be living with their said spouses.

(2) The spouses of all soldiers who were members of a soldiers' home or colony in this state or entitled to admission thereto at the time of death, and the spouses of all soldiers who would have been entitled to admission to a soldiers' home or colony in this state at the time of death but for the fact that they were not indigent and unable to support themselves and families, which spouses have since the death of their said husbands or wives become indigent and unable to earn a support for themselves: *Provided*, That such spouses are not less than fifty years of age and have not been married since the decease of their said husbands or wives to any person not a member of a soldiers' home or colony in this state or entitled to admission thereto. Any resident of said colony may be admitted to the hospital at the state soldiers' home for temporary care when requiring hospital treatment. [1973 1st ex.s. c 154 § 102; 1959 c 235 § 1; 1959 c 28 § 72.36.040. Prior: 1947 c 190 § 1; 1925 ex.s. c 74 § 1; 1915 c 106 § 2; Rem. Supp. 1947 § 10730.]

Reviser's note: RCW 72.36.040 was amended twice during the 1973 regular and first extraordinary sessions of the legislature, each without reference to the other.

For rule of construction concerning sections amended twice at the same legislative session, see RCW 1.12.025.

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

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

72.36.050 Regulations of home applicable—Rations, medical attendance, clothing. The members of the colony established in RCW 72.36.040 as now or hereafter amended shall, to all intents and purposes, be members of the state soldiers' home and subject to all the rules and regulations thereof, except the requirements of fatigue duty, and each member shall, in accordance with rules and regulations adopted by the

director, be supplied with medical attendance and supplies from the home dispensary and rations not exceeding thirty dollars per month in value, and clothing not exceeding sixty dollars per year in value for a member and spouse, and thirty-five dollars per year in value for a spouse admitted under RCW 72.36.040 as now or hereafter amended. [1973 1st ex.s. c 154 § 103; 1967 c 112 § 1; 1959 c 28 § 72.36.050. Prior: 1947 c 190 § 2; 1939 c 161 § 1; 1927 c 276 § 1; 1925 ex.s. c 74 § 1; 1915 c 106 § 3; Rem. Supp. 1947 § 10731.]

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

72.36.060 Federal funds. The state treasurer is authorized to receive any and all moneys appropriated or paid by the United States under the act of congress entitled "An Act to provide aid to state or territorial homes for disabled soldiers and sailors of the United States," approved August 27, 1888, or under any other act or acts of congress for the benefit of such homes. Such moneys shall be deposited in the general fund and shall be expended for the maintenance of the soldiers' home. [1959 c 28 § 72.36.060. Prior: 1897 c 67 § 1; RRS § 10735.]

72.36.070 Washington veterans' home. There shall be established and maintained in this state a branch of the state soldiers' home, under the name of the "Washington veterans' home," which branch shall be a home for honorably discharged soldiers, sailors and marines who have served the United States government in any of its wars, members of the state militia disabled while in the line of duty, and who are bona fide citizens of the state, and also the wives of such soldiers, sailors and marines. [1959 c 28 § 72.36.070. Prior: 1907 c 156 § 1; RRS § 10733.]

72.36.080 Who may be admitted to veterans' home. All of the following persons who have been actual bona fide residents of this state at the time of their application, and who are indigent and unable to earn a support for themselves and families may be admitted to the Washington veterans' home under such rules and regulations as may be adopted by the director: *Provided*, That sufficient facilities and resources are available to accommodate such person:

(1) All honorably discharged veterans of the armed forces of the United States who have served the United States in any of its wars, and members of the state militia disabled while in the line of duty, and the spouses of such veterans, and members of the state militia: *Provided*, That such spouse was married to and living with such veteran on or before three years prior to the date of application for admittance, or, if married to him or her since that date, was also a member of a soldiers' home or colony in this state or entitled to admission thereto.

(2) The spouses of all soldiers, sailors, and marines and members of the state militia disabled while in the line of duty, who were members of a soldiers' home or colony in this state or entitled to admission thereto at the time of death, and spouses of all such soldiers, sailors, and marines and members of the state militia, who

would have been entitled to admission to a soldiers' home or colony in this state at the time of death but for the fact that they were not indigent and unable to earn a support for themselves and families, which spouses have since the death of their husbands or wives, become indigent and unable to earn a support for themselves: *Provided*, That such spouses are not less than fifty years of age and were married and living with their husbands or wives on or before three years prior to the date of their application, and have not been married since the decease of their husbands or wives to any person not a member of a soldiers' home or colony in this state or entitled to admission thereto. [1975 c 13 § 2; 1973 1st ex.s. c 154 § 104; 1959 c 28 § 72.36.080. Prior: 1955 c 104 § 1; 1927 c 276 § 2; 1915 c 106 § 4; RRS § 10732.]

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

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

72.36.090 Occupational therapy and hobby promotion. The superintendent of the state soldiers' home and colony is hereby authorized to:

(1) Institute programs of occupational therapy and hobby promotion designed to improve the general welfare and mental condition of the persons under his supervision;

(2) Provide for the financing of these programs by loans from funds in the superintendent's custody through operation of canteens and exchanges at such institutions;

(3) Limit the hobbies and occupational therapy sponsored to projects which will, in his judgment, be self-liquidating or self-sustaining. [1959 c 28 § 72.36.090. Prior: 1949 c 114 § 1; Rem. Supp. 1949 § 10736-1.]

72.36.100 Purchase of equipment, materials for therapy, hobbies. The superintendent of each institution referred to in RCW 72.36.090 may purchase, from the appropriation to the institution, for operations, equipment or materials designed to initiate the programs authorized by RCW 72.36.090. [1959 c 28 § 72.36.100. Prior: 1949 c 114 § 2; Rem. Supp. 1949 § 10736-2.]

Division of purchasing: RCW 43.19.190.

Washington commodities to be used: Chapter 39.24 RCW.

72.36.110 Burial of deceased member or deceased spouse. The superintendent of the Washington veterans' home and the superintendent of the Washington soldiers' home and colony are hereby authorized to provide for the burial of deceased members in the cemeteries provided at the Washington veterans' home and Washington soldiers' home: *Provided*, That this section shall not be construed to prevent any relative from assuming jurisdiction of such deceased persons: *Provided further*, That the superintendent of the Washington soldiers' home and colony is hereby authorized to provide for the burial of husbands and wives of members of the colony of the Washington soldiers' home. [1959 c 120 § 1; 1959 c 28 § 72.36.110. Prior: 1955 c 247 § 7.]

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Chapter 72.40
STATE SCHOOLS FOR BLIND AND DEAF

Sections

- 72.40.010 Schools established.
72.40.020 Superintendents—Appointment—Qualifications—
Discharge of employees.
72.40.031 School year—School term—Legal holidays—Use
of schools.
72.40.040 Who may be admitted.
72.40.050 Admission of nonresidents.
72.40.060 Duty of school district clerks.
72.40.070 Duty of educational service district superintendents.
72.40.080 Duty of parents.
72.40.090 Expense of transportation.
72.40.100 Penalty.

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Handicapped children, parental responsibility, commitment: Chapter 26.40 RCW.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

72.40.010 Schools established. There are established at Vancouver, Clark county, an institution which shall be known as the state school for the blind, and a separate institution which shall be known as the state school for the deaf. [1959 c 28 § 72.40.010. Prior: 1913 c 10 § 1; 1886 p 136 § 1; RRS § 4645.]

72.40.020 Superintendents—Appointment—Qualifications—Discharge of employees. The director shall appoint a superintendent for each institution. The superintendents must be not less than thirty nor more than seventy years of age and must be practically acquainted with school management and class instruction of the blind and the deaf, respectively, having had at least ten years' actual experience in teaching in schools for such persons.

The director may discharge any employee in his discretion. [1959 c 28 § 72.40.020. Prior: 1909 c 97 p 258 § 5; RRS § 4649.]

Superintendent, general provisions: RCW 72.01.060.

72.40.031 School year—School term—Legal holidays—Use of schools. The school year for the state school for the blind and the state school for the deaf shall commence on the first day of July of each year and shall terminate on the 30th day of June of the succeeding year. The regular school term shall be for a period of nine months and shall commence as near as reasonably practical at the time of the commencement of regular terms in the public schools, with the equivalent number of days as are now required by law, and the regulations of the superintendent of public instruction as now or hereafter amended, during the school year in the public schools. The school shall observe all legal holidays, in the same manner as other agencies of state government, and the schools will not be in session on such days and such other days as may be approved by the director of institutions. During the period when the schools are not in session during the regular school term, schools may be operated, subject to the approval of the director, for the instruction of students or for such other reasons which are in furtherance of the objects and purposes of such schools. [1970 ex.s. c 50 § 6.]

72.40.040 Who may be admitted. The institutions shall be free to residents of the state between the ages of six and twenty-one years, and who are blind or deaf, and who are free from loathsome or contagious diseases: *Provided*, That children under the age of six, who are otherwise qualified may be admitted to the institution, if in the discretion of the superintendent they are proper subjects to receive the training given in the institution and the facilities are adequate for proper care and training: *Provided further*, That students over the age of twenty-one years, who are otherwise qualified may be retained at the institution, if in the discretion of the superintendent in consultation with the faculty they are proper subjects to receive further training given at the institution and the facilities are adequate for proper care and training. [1969 c 39 § 1; 1959 c 28 § 72.40.040. Prior: 1955 c 260 § 1; 1909 c 97 p 258 § 3; 1903 c 140 § 1; 1897 c 118 § 229; 1886 p 136 § 2; RRS § 4647.]

72.40.050 Admission of nonresidents. The director may admit to the schools blind or deaf children from other states, but the parents or guardians of such children will be required to pay annually or quarterly in advance a sufficient amount to cover the cost of maintaining and educating such children. [1959 c 28 § 72.40.050. Prior: 1909 c 97 p 258 § 4; 1897 c 118 § 251; 1886 p 141 § 32; RRS § 4648.]

72.40.060 Duty of school district clerks. It shall be the duty of the clerks of all school districts in the state, at the time for making the annual reports, to report to the superintendent of their respective educational service districts the names of all deaf, mute, or blind youth residing within their respective school districts who are between the ages of six and twenty-one years. [1975 1st ex.s. c 275 § 151; 1969 ex.s. c 176 § 97; 1959 c 28 § 72.40.060. Prior: 1909 c 97 p 258 § 6; 1897 c 118 § 252; 1890 p 497 § 1; RRS § 4650.]

Effective date—1969 ex.s. c 176: The effective date of this section, RCW 72.40.070, 72.40.080 and 72.40.100 was April 25, 1969.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.21.010.

Superintendent's duties: RCW 28A.58.150.

72.40.070 Duty of educational service district superintendents. It shall be the duty of each educational service district superintendent to make a full and specific report of such deaf, mute, or blind youth to the board of county commissioners of the county in which the youth resides at its regular meeting in July of each year. He shall also, at the same time, transmit a duplicate copy of such report to the director and the superintendent of the school for the blind or the school for the deaf, as the case may be. [1975 1st ex.s. c 275 § 152; 1969 ex.s. c 176 § 98; 1959 c 28 § 72.40.070. Prior: 1909 c 97 p 259 § 7; 1897 c 118 § 253; 1890 p 497 § 2; RRS § 4651.]

Effective date—1969 ex.s. c 176: See note following RCW 72.40.060.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.21.010.

Educational service districts—Superintendents—Boards: Chapter 28A.21 RCW.

72.40.080 Duty of parents. It shall be the duty of the parents or the guardians of all such blind or deaf youth to send them each year to the proper institution. The educational service district superintendent shall take all action necessary to enforce this section. If satisfactory evidence is laid before the educational service district superintendent that any blind or deaf youth is being properly educated at home or in some suitable institution other than the state schools, he shall take no action in such case other than to make a record of such fact, and take such steps as may be necessary to satisfy himself that such defective youth will continue to receive a proper education. [1975 1st ex.s. c 275 § 153; 1969 ex.s. c 176 § 99; 1959 c 28 § 72.40.080. Prior: 1909 c 97 p 259 § 8; 1897 c 118 § 254; 1890 p 498 § 3; RRS § 4652.]

Effective date—1969 ex.s. c 176: See note following RCW 72.40.060.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.21.010.

Handicapped children, parental responsibility, commitment: Chapter 26.40 RCW.

72.40.090 Expense of transportation. If it appears to the satisfaction of the board of county commissioners that the parents of any such blind or deaf youth within their county are unable to bear the expense of transportation to and from the state schools, it shall send them to and return them from the schools or maintain them there during vacation at the expense of the county. Nothing in this section shall be construed as prohibiting the department from authorizing or incurring such travel expenses for the purpose of transporting such blind or deaf youth to and from points within this state during weekends and/or vacation periods. For the purposes of this section, the department shall impose no conditions upon parents or guardians specifying the number of weekends such persons shall take custody of deaf and blind students. [1975 c 51 § 1; 1959 c 28 § 72.40.090. Prior: 1909 c 97 p 259 § 9; 1899 c 142 § 28; 1899 c 81 § 2; 1897 c 118 § 255; RRS § 4653.]

72.40.100 Penalty. Any parent, guardian, educational service district superintendent or county commissioner who, without proper cause, fails to carry into effect the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, upon the complaint of any officer or citizen of the county or state, before any justice of the peace or superior court, shall be fined in any sum not less than fifty nor more than two hundred dollars. [1975 1st ex.s. c 275 § 154; 1969 ex.s. c 176 § 100; 1959 c 28 § 72.40.100. Prior: 1909 c 97 p 259 § 10; 1897 c 118 § 256; 1890 p 498 § 5; RRS § 4654.]

Effective date—1969 ex.s. c 176: See note following RCW 72.40.060.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.21.010.

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Chapter 72.41 BOARD OF TRUSTEES—SCHOOL FOR THE BLIND

Sections

72.41.010	Intention—Purpose.
72.41.020	Board of trustees—Created—Membership— Terms—Vacancies—Officers—Rules and regulations.
72.41.030	Bylaws—Rules and regulations—Officers.
72.41.040	Powers and duties.
72.41.050	Eligibility and certification of teachers—Rules and regulations.
72.41.060	Travel expenses.
72.41.070	Meetings.
72.41.080	Local advisory committees.

72.41.010 Intention—Purpose. It is the intention of the legislature in creating a board of trustees for the state school for the blind to perform the duties set forth in this chapter, that the board of trustees perform needed advisory services to the legislature and directly to the secretary of the department of social and health services, hereinafter denominated the "secretary", in the development of programs for the blind, and in the operation of the Washington state school for the blind. [1973 c 118 § 1.]

72.41.020 Board of trustees—Created—Membership—Terms—Vacancies—Officers—Rules and regulations. There is hereby created a board of trustees for the state school for the blind to be composed of eleven trustees. In making such appointments the governor shall give consideration to geographical exigencies and shall appoint one trustee residing in each of the state's congressional districts. A representative of the parent-teachers association of the Washington state school for the blind, a representative of the Washington council of the blind, a representative of the Washington state association for the blind and one representative designated by the teacher association, Washington state school for the blind shall each be ex officio and nonvoting members of the board of trustees and shall serve during their respective tenures in such positions.

The initial appointees of the governor to the board of trustees shall draw lots at the first meeting thereof to determine their respective initial terms. One trustee shall serve for one year, one for two years, two for three years, one for four years, and two for five years.

Thereafter the successors of the trustees initially appointed shall be appointed by the governor to serve for a term of five years except that any person appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed only for the remainder of the term.

One trustee shall be a resident and qualified elector from each of the state's seven congressional districts. No voting trustee may be an employee of the state school for the blind, a member of the board of directors of any school district, a member of the governing board of any public or private educational institution, or an elected officer or member of the legislative authority or any municipal corporation.

The board of trustees shall organize itself by electing a chairman from its members. The board shall adopt a

seal and may adopt such bylaws, rules, and regulations as it deems necessary for its own government. Four voting members of the board shall constitute a quorum, but a lesser number may adjourn from time to time and may compel the attendance of absent members in such manner as prescribed in its bylaws, rules, or regulations. The superintendent of the state school for the blind shall serve as, or may designate another person to serve as, the secretary of the board, who shall not be deemed to be a member of the board. [1973 c 118 § 2.]

72.41.030 Bylaws—Rules and regulations—Officers. Within thirty days of their appointment or July 1, 1973, whichever is sooner, the board of trustees shall organize, adopt bylaws for its own government, and make such rules and regulations not inconsistent with this chapter as they deem necessary. At such organizational meeting it shall elect from among its members a chairman and a vice chairman, each to serve for one year, and annually thereafter shall elect such officers to serve until their successors are appointed or qualified. [1973 c 118 § 3.]

72.41.040 Powers and duties. Under the general auspices of the secretary of the department of social and health services, the board of trustees of the state school for the blind:

(1) Shall monitor and inspect all existing facilities of the state school for the blind, and report its findings to the secretary;

(2) Shall study and recommend comprehensive programs of education and training and review the admission policy as set forth in RCW 72.40.040 and 72.40.050, and make appropriate recommendations to the secretary;

(3) Shall advise the secretary in selection of qualified candidates for superintendent, members of the faculty and such other administrative officers and other employees, who shall all be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law. All employees and personnel classified under chapter 41.06 RCW shall continue, after June 7, 1973, to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law;

(4) May recommend to the secretary the establishment of new facilities as needs demand;

(5) May recommend to the secretary rules and regulations for the government, management, and operation of such housing facilities deemed necessary or advisable;

(6) May make recommendations to the secretary concerning classrooms and other facilities to be used for summer or night schools, or for public meetings and for any other uses consistent with the use of such classrooms or facilities for the school for the blind;

(7) May make recommendations to the secretary for adoption of rules and regulations for pedestrian and vehicular traffic on property owned, operated, or maintained by the school for the blind;

(8) Shall recommend to the secretary, with the assistance of the faculty, the course of study including vocational training in the school for the blind, in accordance with other applicable provisions of law and rules and regulations;

(9) May grant to every student, upon graduation or completion of a program or course of study, a suitable diploma, nonbaccalaureate degree, or certificate;

(10) Shall participate in the development of, and monitor the enforcement of the rules and regulations pertaining to the school for the blind;

(11) Shall perform any other duties and responsibilities prescribed by the secretary. [1973 c 118 § 4.]

72.41.050 Eligibility and certification of teachers—Rules and regulations. The board of trustees shall recommend rules and regulations determining eligibility for and certification of teachers in the state school for the blind, including certification for emergency or temporary, substitute or provisional duty. [1973 c 118 § 5.]

72.41.060 Travel expenses. Each member of the board of trustees shall receive travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and such payments shall be a proper charge to any funds appropriated or allocated for the support of the state school for the blind. [1975-'76 2nd ex.s. c 34 § 167; 1973 c 118 § 6.]

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

72.41.070 Meetings. The board of trustees shall meet at least six times each year. [1973 c 118 § 7.]

72.41.080 Local advisory committees. The board of trustees shall appoint a local advisory committee consisting of five or more persons from the local community and surrounding areas to advise the board on any matter relating to the development of vocational programs for the blind or relating to the operation of the state school for the blind. [1973 c 118 § 8.]

Chapter 72.42 BOARD OF TRUSTEES—SCHOOL FOR THE DEAF

Sections	
72.42.010	Intention—Purpose.
72.42.020	Board of trustees—Created—Membership— Terms—Vacancies—Officers—Rules and regulations.
72.42.030	Bylaws—Rules and regulations—Officers.
72.42.040	Powers and duties.
72.42.050	Eligibility and certification of teachers—Rules and regulations.
72.42.060	Travel expenses.
72.42.070	Meetings.
72.42.080	Local advisory committees.

72.42.010 Intention—Purpose. It is the intention of the legislature, in creating a board of trustees for the state school for the deaf to perform the duties set forth in this chapter, that the board of trustees perform needed services to the secretary of the department of

social and health services, hereinafter denominated the "secretary", in the development of programs for the deaf, and in the operation of the Washington state school for the deaf. [1972 ex.s. c 96 § 1.]

72.42.020 Board of trustees—Created—Membership—Terms—Vacancies—Officers—Rules and regulations. There is hereby created a board of trustees for the state school for the deaf to be composed of ten trustees, of whom seven shall be appointed by the governor. In making such appointments the governor shall give consideration to geographical exigencies and shall appoint one trustee residing in each of the state's congressional districts. The president of the parent-teachers house organization of the deaf school, the vice president of the parent-teachers house organization of the deaf school, and the president of the Washington state association for the deaf shall each be ex officio and nonvoting members of the board of trustees and shall serve during their respective tenures in such positions.

The initial appointees to the board of trustees shall draw lots at the first meeting thereof to determine their respective initial terms. One trustee shall serve for one year, one for two years, two for three years, one for four years, and two for five years.

Thereafter the successors of the trustees initially appointed shall be appointed by the governor to serve for a term of five years except that any person appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed only for the remainder of the term.

One trustee shall be a resident and qualified elector from each of the state's seven congressional districts. No trustee may be an employee of the state school for the deaf, a member of the board of directors of any school district, a member of the governing board of any public or private educational institution, or an elected officer or member of the legislative authority of any municipal corporation.

The board of trustees shall organize itself by electing a chairman from its members. The board shall adopt a seal and may adopt such bylaws, rules, and regulations as it deems necessary for its own government. Four members of the board shall constitute a quorum, but a lesser number may adjourn from time to time and may compel the attendance of absent members in such manner as prescribed in its bylaws, rules, or regulations. The superintendent of the state school for the deaf shall serve as, or may designate another person to serve as, the secretary of the board, who shall not be deemed to be a member of the board. [1972 ex.s. c 96 § 2.]

72.42.030 Bylaws—Rules and regulations—Officers. Within thirty days of their appointment or July 1, 1972, whichever is sooner, the board of trustees shall organize, adopt bylaws for its own government, and make such rules and regulations not inconsistent with this chapter as they deem necessary. At such organizational meeting it shall elect from among its members a chairman and a vice chairman, each to serve for one year, and annually thereafter shall elect such officers to

serve until their successors are appointed or qualified. [1972 ex.s. c 96 § 3.]

72.42.040 Powers and duties. Subject to the direction and control of the secretary of the department of social and health services, the board of trustees of the state school for the deaf:

(1) Shall monitor and inspect all existing facilities of the state school for the deaf, and report its findings to the secretary;

(2) Shall study and recommend comprehensive programs of education and training and review the admission policy as set forth in RCW 72.40.040 and 72.40.050, and make appropriate recommendations to the secretary;

(3) Shall advise the secretary in selection of qualified candidates for superintendent, members of the faculty and such other administrative officers and other employees, who shall all be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law. All employees and personnel classified under chapter 41.06 RCW shall continue, after May 23, 1972, to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law;

(4) May recommend to the secretary the establishment of new facilities as needs demand;

(5) May recommend to the secretary rules and regulations for the government, management, and operation of such housing facilities deemed necessary or advisable;

(6) May make recommendations to the secretary concerning classrooms and other facilities to be used for summer or night schools, or for public meetings and for any other uses consistent with the use of such classrooms or facilities for the school for the deaf;

(7) May make recommendations to the secretary for adoption of rules and regulations for pedestrian and vehicular traffic on property owned, operated, or maintained by the school for the deaf;

(8) Shall recommend to the secretary, with the assistance of the faculty, the course of study including vocational training in the school for the deaf, in accordance with other applicable provisions of law and rules and regulations;

(9) May grant to every student, upon graduation or completion of a program or course of study, a suitable diploma, nonbaccalaureate degree, or certificate.

(10) Shall participate in the development of, and monitor the enforcement of the rules and regulations pertaining to the school for the deaf;

(11) Shall perform any other duties and responsibilities prescribed by the secretary. [1972 ex.s. c 96 § 4.]

72.42.050 Eligibility and certification of teachers—Rules and regulations. The board of trustees shall recommend rules and regulations determining eligibility for and certification of teachers in the state school for the deaf, including certification for emergency or temporary, substitute or provisional duty. [1972 ex.s. c 96 § 5.]

72.42.060 Travel expenses. Each member of the board of trustees shall receive travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and such payments shall be a proper charge to any funds appropriated or allocated for the support of the state school for the deaf. [1975-'76 2nd ex.s. c 34 § 168; 1972 ex.s. c 96 § 6.]

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

72.42.070 Meetings. The board of trustees shall meet at least six times each year. [1972 ex.s. c 96 § 7.]

72.42.080 Local advisory committees. The board of trustees shall appoint a local advisory committee consisting of five or more persons from the local community and surrounding areas to advise the board on any matter relating to the development of programs for the deaf or relating to the operation of the state school for the deaf. [1972 ex.s. c 96 § 8.]

Chapter 72.49 NARCOTIC OR DANGEROUS DRUGS— TREATMENT PROGRAMS

Sections

- 72.49.010 Purpose.
72.49.020 Treatment and rehabilitation programs authorized—
Rules and regulations.

72.49.010 Purpose. The purpose of this chapter is to provide additional programs for the treatment and rehabilitation of persons suffering from narcotic and dangerous drug abuse. [1969 ex.s. c 123 § 1.]

Effective date—1969 ex.s. c 123: "The effective date of this act shall be July 1, 1969." [1969 ex.s. c 123 § 3.] This applies to RCW 72.49.010 and 72.49.020.

72.49.020 Treatment and rehabilitation programs authorized—Rules and regulations. There may be established at an institution, or portion thereof, to be designated by the secretary of the department of social and health services, programs for treatment and rehabilitation of persons in need of medical care and treatment due to narcotic abuse or dangerous drug abuse. Such programs may include facilities for both residential and outpatient treatment. The secretary of the department of social and health services shall promulgate rules and regulations governing the voluntary admission, treatment, and release of such patients, and all other matters incident to the proper administration of this section. [1975-'76 2nd ex.s. c 103 § 2; 1969 ex.s. c 123 § 2.]

Chapter 72.50 STATE BUREAU OF CRIMINAL IDENTIFICATION

Sections

- 72.50.040 Submission to taking of identifying data.

72.50.040 Submission to taking of identifying data. All persons arrested for any of the crimes described in RCW 72.50.060, except children under the age of eighteen years, who shall be treated under RCW 13.04.130, shall submit to the taking of their fingerprints, photographs, physical description and other identifying data. [1970 ex.s. c

49 § 6; 1959 c 28 § 72.50.040. Prior: 1955 c 318 § 4. Formerly RCW 43.29.040.]

Reviser's note: The amendment of this section by 1970 ex.s. c 49 does not take cognizance of the section's repeal by 1970 ex.s. c 18 § 62.

72.50.040 Submission to taking of identifying data. [1959 c 28 § 72.50.040. Prior: 1955 c 318 § 4. Formerly RCW 43.29.040.] Repealed by 1970 ex.s. c 18 § 62.

Reviser's note: This section was also amended by 1970 ex.s. c 49 § 6 without cognizance of the repeal thereof.

Severability—1970 ex.s. c 49: See note following RCW 9.69.100. *Fingerprinting or photographing juvenile: RCW 13.04.130.*

Chapter 72.56 STATE INSTITUTIONS FOR CHILDREN AND YOUTH

Sections

- 72.56.010 Institution at Fort Worden established.
72.56.020 Authority to purchase lands, buildings, equipment at Fort Worden.
72.56.030 Remodeling and alteration at Fort Worden.
72.56.040 Transfer of children and youth from other facilities to Fort Worden.
72.56.050 Superintendent, officers, employees—Appointment.

72.56.010 Institution at Fort Worden established. There is hereby established under the supervision and control of the department of institutions, an institution for the care and custody of children and youth, to be located at Fort Worden, near Port Townsend, in Jefferson county. [1959 c 28 § 72.56.010. Prior: 1957 c 217 § 1.]

72.56.020 Authority to purchase lands, buildings, equipment at Fort Worden. The director is hereby authorized to enter into a contract with the commissioners of the port of Port Townsend for the purchase of, and to accept a deed in the name of the state of Washington, subject to the approval as to form by the attorney general, of certain lands, buildings and equipment situate at Port Townsend in Jefferson county, and known as Fort Worden, a former United States military installation. [1959 c 28 § 72.56.020. Prior: 1957 c 217 § 2.]

72.56.030 Remodeling and alteration at Fort Worden. The director, upon the acquisition of the land, buildings and equipment at Fort Worden, may cause plans, specifications and estimates of cost to be prepared for the remodeling and alteration of said buildings for the institutionalization of children and youth, and for this purpose the director is authorized to employ the service of architects. [1959 c 28 § 72.56.030. Prior: 1957 c 217 § 3.]

72.56.040 Transfer of children and youth from other facilities to Fort Worden. The director shall have authority to transfer children and youth to Fort Worden who are now confined at, or who may hereafter be committed to, any other facility under the supervision of the department for the custody of children and youth. [1959 c 28 § 72.56.040. Prior: 1957 c 217 § 4.]

72.56.050 Superintendent, officers, employees—Appointment. The director is hereby authorized to appoint a superintendent and such other officers and employees as are deemed necessary for the proper operation of the institutions and facilities authorized by this chapter. [1959 c 28 § 72.56.050. Prior: 1957 c 217 § 5.]

Superintendent, general provisions: RCW 72.01.060.

Chapter 72.60

INSTITUTIONAL INDUSTRIES COMMISSION

Sections

72.60.010	Definitions.
72.60.020	Declaration of purpose.
72.60.030	Commission created.
72.60.040	Terms, vacancies, chairman.
72.60.050	Meetings—Quorum.
72.60.060	Compensation—Travel expenses.
72.60.070	Powers and duties.
72.60.075	Institutional industries commission to assist department of social and health services—Department's secretary or designee to act for commission.
72.60.080	Hearing to establish certain industrial enterprises—Prior industrial enterprises.
72.60.090	Compensation for inmates.
72.60.100	Civil rights of inmates not restored—Other laws inapplicable.
72.60.102	Industrial insurance—Application to certain inmates—Payment of premiums and assessments.
72.60.110	Employment of inmates according to needs of state.
72.60.120	Kind, quality, quantity of goods and services.
72.60.130	Goods for public use—Exception.
72.60.140	Markings on containers.
72.60.150	Prices of goods.
72.60.160	State agencies and subdivisions may purchase goods—Purchasing preference required of certain institutions.
72.60.170	Unlawful sales—Penalty.
72.60.180	Use of profits.
72.60.190	Supervisor of purchasing to give preference to goods produced by authorized industries.
72.60.200	Exceptions from operation of chapter—Board—Variance from adopted standards.
72.60.210	Vouchers not to be questioned for violation of chapter—Violation is malfeasance in office.
72.60.220	List of goods to be supplied to all departments, institutions, agencies.
72.60.230	Declaration of police power—Construction of chapter.
72.60.240	Institutional industries revolving fund—Established—Composition—RCW 43.01.050 not applicable.
72.60.250	Institutional industries revolving fund—Custodian—Deposits—Depositories—Petty cash.
72.60.260	Institutional industries revolving fund—Expenses payable from fund.
72.60.270	Institutional industries revolving fund—Excess moneys.
72.60.280	Reports to governor.

72.60.010 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Institution" means any place under the jurisdiction of the department of institutions at which individuals are confined pursuant to court order.

(2) "Commission" means the institutional industries commission as herein created.

(3) "Enterprise" means an agricultural or manufacturing operation or group of closely related operations within a single institution which in accepted trade practices would ordinarily be carried on as a single unit for the purpose of producing saleable items above and beyond the needs of the producing institution, not to

include or apply to self-sustaining activities, maintenance and construction work and handiwork of prisoners. [1959 c 28 § 72.60.010. Prior: 1955 c 314 § 2. Formerly RCW 43.95.010.]

72.60.020 Declaration of purpose. The purpose of this chapter is to aid and assist the department of institutions in minimizing or eliminating idleness among the inmates of the state penal, correctional, or reformatory institutions and promoting rehabilitation by affording such inmates an opportunity to participate in industrial and agricultural activities and to provide for the disposition and sale of the articles produced. [1959 c 28 § 72.60.020. Prior: 1957 c 30 § 1. Formerly RCW 43.95.015.]

Convict labor: State Constitution Art. 2 § 29.

Convict-made goods: Chapter 19.20 RCW.

Labor and employment of prisoners: Chapter 72.64 RCW.

Labor prescribed by board of prison terms and paroles: RCW 9.95.090.

72.60.030 Commission created. There is hereby created the institutional industries commission which shall consist of the director of the department and six members appointed by the governor of whom two shall be representatives of organized labor, two shall be representatives of industry, one shall be a representative of agriculture and one shall be a representative of the general public. [1959 c 28 § 72.60.030. Prior: 1955 c 314 § 3. Formerly RCW 43.95.020.]

72.60.040 Terms, vacancies, chairman. The first term of the members representing industry and labor shall be two years. The first term of the members representing agriculture and the general public shall be four years. After the first term all appointments shall have a term of four years. The first term of each member shall commence on the first day of June, 1955. No members shall be removed except by the appointing authority and for cause. In the event of a vacancy in the office of any member the balance of the term shall be filled by the appointing authority as in the case of original appointments. The director shall act as chairman of the commission. [1959 c 28 § 72.60.040. Prior: 1955 c 314 § 4. Formerly RCW 43.95.030.]

72.60.050 Meetings—Quorum. The commission shall meet regularly at least four times during each fiscal year and may hold extra meetings on call of the chairman. Four members of the commission shall constitute a quorum and a vote of the majority of the members in office is necessary for the transaction of the business of the commission. [1959 c 28 § 72.60.050. Prior: 1955 c 314 § 5. Formerly RCW 43.95.040.]

72.60.060 Compensation—Travel expenses. The members of the commission, other than the chairman, shall receive twenty-five dollars for each day they are engaged in the official business of the commission, including time spent in traveling, for not more than twenty days in each fiscal year. All members, including the chairman, shall receive their travel expenses incurred

in attending meetings of the commission and in making investigations either as a commission or individually as members of the commission at the request of the chairman in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. The compensation and travel expenses of the members shall be paid from funds available for industrial operations at the institutions and shall be prorated among such funds on the basis of time spent where the efforts of the members are of application to more than one institution. [1975-'76 2nd ex.s. c 34 § 169; 1959 c 28 § 72.60.060. Prior: 1955 c 314 § 6. Formerly RCW 43.95.050.]

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

72.60.070 Powers and duties. The commission shall:

(1) Recommend productive, industrial and agricultural enterprises in the institutions under the jurisdiction of the department in such volume and of such kinds as to eliminate unnecessary idleness among the inmates and to provide diversified work activities which will serve as means of vocational education as well as of occupation and financial support.

(2) Determine the advisability and suitability of establishing, expanding, diminishing, or discontinuing each separate industrial or agricultural enterprise at each institution involving a gross annual production of more than twenty-five thousand dollars value but less than two hundred seventy-five thousand dollars value and authorize or prohibit such action. The commission shall determine the gross annual production, within the limit set above, of each new enterprise at the time of its establishment. The annual production so set shall not be increased until a public hearing concerning the proposed increase has been held before the commission. It shall be the duty of the commission, annually, to adjust the maximum gross annual production value of two hundred seventy-five thousand dollars permitted for each separate enterprise at each institution, the purpose of such adjustment being to keep said limit in balance with changes in population of state institutions and changes in cost of production. Such adjustment shall be made in the following manner:

(a) The maximum limitation of two hundred seventy-five thousand dollars shall serve as a base figure as of December 31, 1954, for such computation.

(b) The maximum limitation for each enterprise at each institution shall be increased or decreased in the same proportion as the population of state institutions shall have increased or decreased in comparison with their population on December 31, 1954.

(c) The maximum limitation for each enterprise at each institution shall be further increased or decreased in the same proportion as the wholesale price index of the United States bureau of labor statistics shall have increased or decreased in comparison with such wholesale price index as of December 31, 1954.

The maximum gross annual limitation on production as adjusted in accordance with the above formula shall replace and serve in lieu of the two hundred seventy-five

thousand dollars limitation until the next annual adjustment is made by the commission. It shall apply to enterprises previously authorized as well as to those authorized during the current period, and such adjustment may be made without public hearing.

(3) Hold hearings and make rules for the conducting of such hearings. The commission may in its discretion hold public hearings on any subject within its jurisdiction. [1959 c 28 § 72.60.070. Prior: 1955 c 314 § 7. Formerly RCW 43.95.060.]

72.60.075 Institutional industries commission to assist department of social and health services—Department's secretary or designee to act for commission. See RCW 43.20A.230.

72.60.080 Hearing to establish certain industrial enterprises—Prior industrial enterprises. No industrial enterprise which involves a gross annual production of more than twenty-five thousand dollars shall be established unless and until a hearing concerning the enterprise has been had before the commission. Public notice of the hearing shall be given prior to the hearing. At the time this commission becomes established by law, it shall at the earliest possible time convene and make necessary arrangements to place industrial enterprises that were in operation prior to this law under compliance with this law. [1959 c 28 § 72.60.080. Prior: 1955 c 314 § 8. Formerly RCW 43.95.070.]

72.60.090 Compensation for inmates. Each inmate, who is engaged in productive work in any state prison or institution under the jurisdiction of the department as a part of the work program, may receive for his work such compensation as the director shall determine. Such compensation shall be in accordance with a graduated schedule based on quantity and quality of work performed and skill required for its performance, and be limited to such amounts as are set up by the director and approved by the commission. Said compensation shall be credited to the account of the inmate.

When any inmate violates the rules of the institution or escapes, the director shall determine what portion of his earnings shall be forfeited and such forfeiture shall be deposited in the industrial operations revolving fund of such institution.

Said compensation shall be paid from the industrial operations revolving fund of the institution. Whenever by any statute a price is required to be fixed for any article, material, supply, or services to be produced, manufactured, supplied, or performed in connection with the work program of the department, the compensation paid to inmates shall be included as an item of cost in fixing the final statutory price.

Inmates not engaged on work programs under the jurisdiction of the commission and financed out of the industrial operations revolving fund, but who are engaged in productive labor outside of such programs may be compensated in like manner. The compensation of such inmates shall be paid either out of funds appropriated by the legislature for that purpose or out of the industrial operations revolving fund of the institution, as

the director of the department may direct. [1959 c 28 § 72.60.090. Prior: 1955 c 314 § 9. Formerly RCW 43.95.080.]

72.60.100 Civil rights of inmates not restored—Other laws inapplicable. Nothing in this chapter is intended to restore, in whole or in part, the civil rights of any inmate. No inmate compensated under this chapter shall be considered as an employee or to be employed by the state or the department, nor shall any such inmate, except those provided for in RCW 72.60.102 and 72.64-.065, come within any of the provisions of the workmen's compensation act, or be entitled to any benefits thereunder whether on behalf of himself or of any other person. All moneys paid to inmates shall be considered a gratuity. [1972 ex.s. c 40 § 1; 1959 c 28 § 72.60.100. Prior: 1955 c 314 § 10. Formerly RCW 43.95.090.]

Effective date—1972 ex.s. c 40: "This act shall be effective July 1, 1973." [1972 ex.s. c 40 § 4.] This applies to the 1972 ex.s. amendment to this section and to RCW 72.60.102 and 72.64.065.

Restoration of civil rights: Chapter 9.96 RCW.

72.60.102 Industrial insurance—Application to certain inmates—Payment of premiums and assessments. From and after July 1, 1973, any inmate employed in an industrial enterprise pursuant to the provisions of chapter 72.60 RCW, shall be eligible for the benefits provided by Title 51 RCW, as now or hereafter amended, relating to industrial insurance, with the exceptions herein provided.

No inmate as herein described, until released upon an order of parole by the state board of prison terms and paroles, or discharged from custody upon expiration of sentence, or discharged from custody by order of a court of appropriate jurisdiction, or his dependents or beneficiaries, shall be entitled to any payment for temporary disability or permanent total disability as provided for in RCW 51.32.090 or 51.32.060 respectively, as now or hereafter enacted, or to the benefits of chapter 51.36 RCW relating to medical aid.

Any and all premiums or assessments as may arise hereunder pursuant to the provisions of Title 51 RCW shall be the obligation of and be paid from the institutional industries revolving fund. [1972 ex.s. c 40 § 2.]

72.60.110 Employment of inmates according to needs of state. The department is hereby authorized and empowered to cause the inmates in the state institutions of this state to be employed in the rendering of such services and in the production and manufacture of such articles, materials, and supplies as are now, or may hereafter be, needed by the state, or any political subdivision thereof, or that may be needed by any public institution of the state or of any political subdivision thereof. [1959 c 28 § 72.60.110. Prior: 1955 c 314 § 11. Formerly RCW 43.95.100.]

72.60.120 Kind, quality, quantity of goods and services. The commission shall, from time to time, determine the kind, quality, and quantity, of the several articles, materials, and supplies to be thus produced and manufactured or the services to be rendered. [1959 c 28 §

72.60.120. Prior: 1955 c 314 § 12. Formerly RCW 43.95.110.]

72.60.130 Goods for public use—Exception. All articles, materials, and supplies, produced or manufactured under the provisions of this chapter shall be solely and exclusively for public use and no article, material, or supplies, produced or manufactured under the provisions of this chapter shall ever be sold, supplied, furnished, exchanged, or given away, for any private use or profit whatever, except that, to avoid waste or spoilage and consequent loss to the state, byproducts and surpluses of agricultural and animal husbandry enterprises may be sold to private persons, at private sale, under rules prescribed by the director. [1959 c 28 § 72.60.130. Prior: 1955 c 314 § 13. Formerly RCW 43.95.120.]

72.60.140 Markings on containers. Each and every article manufactured under the provisions of this chapter shall have plainly marked or stamped on the outside of the shipping container thereof, the words "Washington Institutional Industries." [1959 c 28 § 72.60.140. Prior: 1955 c 314 § 14. Formerly RCW 43.95.130.]

72.60.150 Prices of goods. The commission shall from time to time examine and approve the price at which such articles, materials, and supplies are sold, which price shall be as near the prevailing market price as possible. [1959 c 28 § 72.60.150. Prior: 1955 c 314 § 15. Formerly RCW 43.95.140.]

72.60.160 State agencies and subdivisions may purchase goods—Purchasing preference required of certain institutions. All articles, materials, and supplies herein authorized to be produced or manufactured may be purchased from the institution producing or manufacturing the same by any state agency or political subdivision of the state and at the prices fixed in the manner herein provided, and the director shall require those institutions under his direction to give preference to the purchasing of their needs of such articles as are produced under this chapter. [1959 c 28 § 72.60.160. Prior: 1955 c 314 § 16. Formerly RCW 43.95.150.]

72.60.170 Unlawful sales—Penalty. It shall be unlawful for any person to sell, expose for sale, or offer for sale within this state, any article or articles manufactured wholly or in part by inmate labor, except articles the sale of which is specifically sanctioned by law.

Every person selling, exposing for sale, or offering for sale any article manufactured in this state wholly or in part by inmate labor, the sale of which is not specifically sanctioned by law, is guilty of a misdemeanor. [1959 c 28 § 72.60.170. Prior: 1955 c 314 § 17. Formerly RCW 43.95.160.]

72.60.180 Use of profits. If and when the industries or enterprises covered by this chapter develop to a point where they accrue profits, profits shall be utilized as follows:

(1) Maintenance of facilities or equipment used in existing industries.

- (2) Establishment and maintenance of new industries.
 (3) To provide vocational training for employees of the industries and other inmates.
 (4) To hold in a reserve all additional profits for the purpose of creating a fund to establish forest camps and treatment facilities. [1959 c 28 § 72.60.180. Prior: 1955 c 314 § 18. Formerly RCW 43.95.170.]

72.60.190 Supervisor of purchasing to give preference to goods produced by authorized industries. The supervisor of purchasing for the state of Washington shall give preference in the purchase of materials and supplies for the institutions, departments and agencies of the state, to those produced by industries authorized and approved by the institutional industries commission. [1959 c 28 § 72.60.190. Prior: 1957 c 30 § 2. Formerly RCW 43.95.180.]

72.60.200 Exceptions from operation of chapter—Board—Variance from adopted standards. Exceptions from the operation of the provisions of this chapter may be made in any case where in the opinion of the supervisor of purchasing, the attorney general and the commissioner of the employment security department, or a majority of them who are hereby constituted a board for such purpose, the articles so produced or manufactured do not meet the reasonable requirements of such departments, institutions, or agencies of the state of Washington. In any case where the requisition made cannot be complied with on account of an insufficient supply of articles or supplies required, the director may grant an exemption to such requisitioning department or agency of the state of Washington. No department, institution, or agency of the state of Washington shall be allowed to evade the intent and meaning of this section by slight variations from adopted standards when the articles produced or manufactured by such institutional industries are reasonably adapted to the actual needs of such departments, institutions, or agencies of the state of Washington. [1959 c 28 § 72.60.200. Prior: 1957 c 30 § 4. Formerly RCW 43.95.190.]

Attorney general: Chapter 43.10 RCW.
Employment security commissioner: RCW 50.08.010.
Supervisor of purchasing: RCW 43.19.180.

72.60.210 Vouchers not to be questioned for violation of chapter—Violation is malfeasance in office. No voucher, certificate, or warrant issued on the state treasurer by any such department, institution, or agency of the state of Washington shall be questioned by him or by the state auditor on the grounds that this chapter has not been complied with by such department, institution, or agency, but if intentional violation of this chapter continues after notice from the governor to desist, such violation shall constitute a malfeasance in office and shall subject the officers responsible for this violation to suspension or removal from office, as may be provided by law in other cases of malfeasance. [1959 c 28 § 72.60.210. Prior: 1957 c 30 § 5. Formerly RCW 43.95.200.]

72.60.220 List of goods to be supplied to all departments, institutions, agencies. The department may cause

to be prepared annually, at such times as it may determine, lists containing the descriptions of all articles and supplies manufactured and produced pursuant to the provisions of this chapter; copies of such list shall be sent to the supervisor of purchasing and to all departments, institutions and agencies of the state of Washington. [1959 c 28 § 72.60.220. Prior: 1957 c 30 § 6. Formerly RCW 43.95.210.]

72.60.230 Declaration of police power—Construction of chapter. This chapter shall be deemed an exercise of the police power of the state for the protection of the health, welfare, peace and safety of the people and shall be liberally construed for the accomplishment of that purpose. [1959 c 28 § 72.60.230. Prior: 1957 c 30 § 3. Formerly RCW 43.95.220.]

72.60.240 Institutional industries revolving fund—Established—Composition—RCW 43.01.050 not applicable. There is hereby established under the supervision and control of the director of the department of institutions a fund to be known as the institutional industries revolving fund, which shall consist of all funds collected and all profits which shall hereafter accrue from the industrial and agricultural operations under the jurisdiction of the institutional industries commission, and such funds appropriated by the legislature from the state institutional revolving account of the state general fund to the institutional industries revolving fund created by this section. The provisions of RCW 43.01.050 shall not be applicable to such fund, nor to any of the moneys received, collected or deposited in such fund. [1959 c 273 § 1.]

State institutional revolving account abolished: "From and after the first day of August, 1959, the state institutional revolving account in the state general fund is hereby abolished." [1959 c 273 § 7.]

Moneys transferred: "All moneys to the credit of the state institutional revolving account of the state general fund on the first day of August, 1959, and all moneys thereafter paid to the state treasurer to the credit of such account in the general fund are hereby transferred to the state institutional industries fund created by this act." [1959 c 273 § 8.]

Payment of warrants drawn on revolving account: "From and after the first day of August, 1959, all warrants drawn on the state institutional revolving account in the general fund of the state treasury and not presented for payment, shall be paid from the state institutional industries revolving fund." [1959 c 273 § 9.]

72.60.250 Institutional industries revolving fund—Custodian—Deposits—Depositories—Petty cash. The institutional industries revolving fund shall be deposited by the state treasurer, who shall be the custodian of such fund, in such depository or depositories as may be authorized by law to accept state funds to the credit of a fund to be designated the institutional industries revolving fund, which fund shall not be a state fund and shall at all times be kept segregated and set apart from all other funds and in trust for the purposes as set forth in RCW 72.60.260 and chapter 72.60 RCW.

All moneys received by the director, or any employee, from the operation of the industrial or agricultural programs under the jurisdiction of the institutional industries commission, except an amount of petty cash for

each day's needs as fixed by resolution of the institutional industries commission, shall be paid over by the director to the state treasurer each day, and as often during the day as advisable, who shall deposit the same forthwith as demand deposits to the credit of the institutional industries revolving fund in a depository or depositories selected by the state treasurer under the terms of this section. [1959 c 273 § 2.]

72.60.260 Institutional industries revolving fund—Expenses payable from fund. All expenses arising in the administration of the industrial and agricultural programs of the department of institutions under the jurisdiction of the institutional industries commission, including the payment of expenses of the members of the commission and the salaries of employees administering such programs and all expenditures incurred in establishing, maintaining, and operating the industrial and agricultural programs of the department of institutions, shall be paid from the institutional industries revolving fund, subject to the approval of the institutional industries commission. [1959 c 273 § 3.]

72.60.270 Institutional industries revolving fund—Excess moneys. At such times as the moneys in the institutional industries revolving fund exceed such amount as shall be necessary for the efficient operation of the institutional industries program to be determined by periodic audits of the director of budget, the excess shall be forwarded and paid over by the secretary to the state treasurer for deposit in the general fund of the state treasury. [1971 ex.s. c 189 § 11; 1959 c 273 § 4.]

72.60.280 Reports to governor. The secretary shall prepare and forward to the governor annually a report for the fiscal year ending on the thirtieth day of June of the fiscal year in which the report is made, which report shall be a public document and contain:

(1) A detailed financial statement and balance showing in general the condition of the industrial and agricultural programs of the department and their operation during the year; (2) general information concerning institutional industrial and agricultural programs; and (3) any further information requested by the governor. [1971 ex.s. c 189 § 12; 1959 c 273 § 5.]

Chapter 72.62 VOCATIONAL EDUCATION PROGRAMS

Sections

72.62.010	Purpose.
72.62.020	Definitions.
72.62.030	Sale of products, etc.—Recovery of costs, etc.
72.62.040	Crediting of proceeds of sales.
72.62.050	Trade advisory and apprenticeship committees.

72.62.010 Purpose. The legislature declares that programs of vocational education are essential to the habilitation and rehabilitation of residents of state correctional institutions and facilities. It is the purpose of this chapter to provide for greater reality and relevance in the vocational education programs within the correctional institutions of the state. [1972 ex.s. c 7 § 1.]

72.62.020 Definitions. When used in this chapter, unless the context otherwise requires:

The term "vocational education" means a planned series of learning experiences, the specific objective of which is to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or sub-professionals in recognized occupations and in new and emerging occupations, but shall not mean programs the primary characteristic of which is repetitive work for the purpose of production, including the institutional industries program. [1972 ex.s. c 7 § 2.]

72.62.030 Sale of products, etc.—Recovery of costs, etc. Products goods, wares, articles, or merchandise manufactured or produced by residents of state correctional institutions or facilities within or in conjunction with vocational education programs for the training, habilitation, and rehabilitation of inmates may be sold on the open market, at public auction. When services are performed by residents within or in conjunction with such vocational education programs, the cost of materials used and the value of depreciation of equipment used may be recovered. [1972 ex.s. c 7 § 3.]

72.62.040 Crediting of proceeds of sales. The secretary of the department of social and health services shall credit the proceeds derived from the sale of such products, goods, wares, articles, or merchandise manufactured or produced by inmates of state correctional institutions within or in conjunction with vocational education programs to the institution where manufactured or produced to be deposited in a revolving fund to be expended for the purchase of supplies, materials and equipment for use in vocational education. [1972 ex.s. c 7 § 4.]

72.62.050 Trade advisory and apprenticeship committees. Labor-management trade advisory and apprenticeship committees shall be constituted by the department for each vocation taught within the vocational education programs in the state correctional system. [1972 ex.s. c 7 § 5.]

Chapter 72.64

LABOR AND EMPLOYMENT OF PRISONERS

Sections

72.64.010	Useful employment of prisoners—Contract system barred.
72.64.020	Rules and regulations.
72.64.030	Prisoners required to work—Private benefit of enforcement officer prohibited.
72.64.040	Crediting of earnings—Payment.
72.64.050	Branch institutions—Honor camps for certain purposes.
72.64.060	Labor camps authorized—Type of work permitted—Contracts.
72.64.065	Industrial insurance—Application to certain inmates—Payment of premiums and assessments.
72.64.070	Industrial insurance—Eligibility for employment—Procedure—Return.
72.64.080	Industrial insurance—Duties of employing agency—Costs—Supervision.
72.64.090	Industrial insurance—Department's jurisdiction.
72.64.100	Regional jail camps—Authorized—Purposes—Rules.

- 72.64.110 Contracts to furnish county prisoners confinement, care and employment—Reimbursement by county—Sheriff's order—Return of prisoner.
- 72.64.120 Jails and detention facilities—Director to inspect, establish standards and procedures, recommend rules, report to the legislature, etc.

Contract system barred: State Constitution Art. 2 § 29.

Institutional industries commission: Chapter 72.60 RCW.

Labor prescribed by board of prison terms and paroles: RCW 9.95.090.

72.64.010 Useful employment of prisoners—Contract system barred. The director shall have the power and it shall be his duty to provide for the useful employment of prisoners in the adult correctional institutions: *Provided*, That no prisoners shall be employed in what is known as the contract system of labor. [1959 c 28 § 72.64.010. Prior: 1943 c 175 § 1; Rem. Supp. 1943 § 10279-1. Formerly RCW 72.08.220.]

Contract system barred: State Constitution Art. 2 § 29.

72.64.020 Rules and regulations. The director shall make the necessary rules and regulations governing the employment of prisoners, the conduct of all such operations, and the disposal of the products thereof, under such restrictions as provided by law. [1959 c 28 § 72.64.020. Prior: 1943 c 175 § 2; Rem. Supp. 1943 § 10279-2. Formerly RCW 72.08.230.]

72.64.030 Prisoners required to work—Private benefit of enforcement officer prohibited. Every prisoner in the Washington state penitentiary or reformatory or other state penal or correctional institution shall be required to work in such manner as may be prescribed by the director, other than for the private financial benefit of any enforcement officer. [1961 c 171 § 1; 1959 c 28 § 72.64.030. Prior: 1927 c 305 § 1; RRS § 10223-1.]

72.64.040 Crediting of earnings—Payment. Where a prisoner is employed at any occupation for which pay is allowed or permitted, or at any gainful occupation from which the state derives an income, the department shall credit the prisoner with the total amount of his earnings.

The amount of earnings credited but unpaid to a prisoner may be paid to the prisoner's spouse, children, mother, father, brother, or sister as the inmate may direct upon approval of the superintendent. Upon release, parole, or discharge, all unpaid earnings of the prisoner shall be paid to him. [1973 1st ex.s. c 154 § 105; 1959 c 28 § 72.64.040. Prior: 1957 c 19 § 1; 1927 c 305 § 3; RRS § 10223-3. Formerly RCW 72.08.250.]

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

72.64.050 Branch institutions—Honor camps for certain purposes. The director shall also have the power to establish temporary branch institutions for the state penitentiary, state reformatory and other penal and correctional institutions of the state in the form of honor camps for the employment of prisoners therein in farming, reforestation, wood-cutting, land clearing, processing of foods in state canneries, forest fire fighting, forest

fire suppression and prevention, stream clearance, watershed improvement, development of parks and recreational areas and other work to conserve the natural resources and protect and improve the public domain and construction of water supply facilities to state institutions. [1961 c 171 § 2; 1959 c 28 § 72.64.050. Prior: 1943 c 175 § 3; Rem. Supp. 1943 § 10279-3. Formerly RCW 72.08.240.]

Leaves of absence for inmates: RCW 72.01.370, 72.01.380.

72.64.060 Labor camps authorized—Type of work permitted—Contracts. Any department, division, bureau, commission, or other agency of the state of Washington or any agency of any political subdivision thereof or the federal government may use, or cause to be used, prisoners confined in state penal or correctional institutions to perform work necessary and proper, to be done by them at camps to be established pursuant to the authority granted by RCW 72.64.060 through 72.64.090: *Provided*, That such prisoners shall not be authorized to perform work on any public road, other than access roads to forestry lands. The director may enter into contracts for the purposes of RCW 72.64.060 through 72.64.090. [1961 c 171 § 3; 1959 c 28 § 72.64.060. Prior: 1955 c 128 § 1. Formerly RCW 43.28.500.]

72.64.065 Industrial insurance—Application to certain inmates—Payment of premiums and assessments. From and after July 1, 1973, any inmate working in a department of natural resources adult honor camp established and operated pursuant to RCW 72.64.050, 72.64.060, and 72.64.100 shall be eligible for the benefits provided by Title 51 RCW, as now or hereafter amended, relating to industrial insurance, with the exceptions herein provided.

No inmate as herein described, until released upon an order of parole by the state board of prison terms and paroles, or discharged from custody upon expiration of sentence, or discharged from custody by order of a court of appropriate jurisdiction, or his dependents or beneficiaries, shall be entitled to any payment for temporary disability or permanent total disability as provided for in RCW 51.32.090 or 51.32.060 respectively, as now or hereafter enacted, or to the benefits of chapter 51.36 RCW relating to medical aid.

Any and all premiums or assessments as may arise under this section pursuant to the provisions of Title 51 RCW shall be the obligation of and be paid by the state department of natural resources. [1972 ex.s. c 40 § 3.]

72.64.070 Industrial insurance—Eligibility for employment—Procedure—Return. The department shall determine which prisoners shall be eligible for employment under RCW 72.64.060, and shall establish and modify lists of prisoners eligible for such employment, upon the requisition of an agency mentioned in RCW 72.64.060. The director may send to the place, and at the time designated, the number of prisoners requisitioned, or such number thereof as have been determined to be eligible for such employment and are available. No prisoner shall be eligible or shall be

released for such employment until his eligibility therefor has been determined by the department.

The director may return to prison any prisoner transferred to camp pursuant to this section, when the need for such prisoner's labor has ceased or when the prisoner is guilty of any violation of the rules and regulations of the prison or camp. [1959 c 28 § 72.64.070. Prior: 1955 c 128 § 2. Formerly RCW 43.28.510.]

72.64.080 Industrial insurance—Duties of employing agency—Costs—Supervision. The agency providing for prisoners under RCW 72.64.060 through 72.64.090 shall designate and supervise all work done under the provisions thereof. The agency shall provide, erect and maintain any necessary camps, except that where no funds are available to the agency, the department may provide, erect and maintain the necessary camps. The director shall supervise and manage the necessary camps and commissaries. [1959 c 28 § 72.64.080. Prior: 1955 c 128 § 3. Formerly RCW 43.28.520.]

72.64.090 Industrial insurance—Department's jurisdiction. The department shall have full jurisdiction at all times over the discipline and control of the prisoners performing work under RCW 72.64.060 through 72.64.090. [1959 c 28 § 72.64.090. Prior: 1955 c 128 § 4. Formerly RCW 43.28.530.]

72.64.100 Regional jail camps—Authorized—Purposes—Rules. The director is authorized to establish and operate regional jail camps for the confinement, treatment, and care of persons sentenced to jail terms in excess of thirty days, including persons so imprisoned as a condition of probation. The director shall make rules and regulations governing the eligibility for commitment or transfer to such camps and rules and regulations for the government of such camps. Subject to the rules and regulations of the director, and if there is in effect a contract entered into pursuant to RCW 72.64.110, a county prisoner may be committed to a regional jail camp in lieu of commitment to a county jail or other county detention facility. [1961 c 171 § 4.]

72.64.110 Contracts to furnish county prisoners confinement, care and employment—Reimbursement by county—Sheriff's order—Return of prisoner. (1) The director may enter into a contract, with the approval of the director of budget, with any county of the state, upon the request of the sheriff thereof, wherein the director agrees to furnish confinement, care, treatment, and employment of county prisoners. The county shall reimburse the state for the cost of such services, such cost to be determined by the director of budget. Each county shall pay to the state treasurer the amounts found to be due.

(2) The director shall accept such county prisoner if he believes that the prisoner can be materially benefited by such confinement, care, treatment and employment, and if adequate facilities to provide such care are available. No such person shall be transported to any facility under the jurisdiction of the director until the director has notified the referring court of the place to which said

person is to be transmitted and the time at which he can be received.

(3) The sheriff of the county in which such an order is made placing a misdemeanor in a jail camp pursuant to this chapter, or any other peace officer designated by the court, shall execute an order placing such county prisoner in the jail camp or returning him therefrom to the court.

(4) The director may return to the committing authority, or to confinement according to his sentence, any person committed or transferred to a regional jail camp pursuant to this chapter when there is no suitable employment or when such person is guilty of any violation of rules and regulations of the regional jail camp. [1961 c 171 § 5.]

72.64.120 Jails and detention facilities—Director to inspect, establish standards and procedures, recommend rules, report to the legislature, etc. See RCW 72.01.420.

Jails and detention facilities: Chapter 36.63 RCW.

Chapter 72.65 WORK RELEASE PROGRAM

Sections	
72.65.010	Definitions.
72.65.020	Extension of limits of place of confinement authorized—Conditions.
72.65.030	Application of prisoner to participate in program—Contents of application.
72.65.040	Approval or denial of application—Adoption of work release plan—Terms and conditions—Revocation—Reapplication.
72.65.050	Disposition of earnings.
72.65.060	Earnings not subject to legal process.
72.65.070	Wilfully failing to return—Deemed escapee and fugitive—Penalty.
72.65.080	Contracts with authorities for payment of expenses for housing participants—Leasing of housing facilities.
72.65.090	Transportation, clothing, supplies, etc., for participants.
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72.65.110	Earnings to be deposited in personal funds—Disbursements.
72.65.120	Participants not considered agents or employees of the state—Contracting with persons, companies, etc., for labor of participants prohibited—Employee benefits and privileges extended to.
72.65.130	Authority of board of prison terms and paroles not impaired.
72.65.900	Effective date—1967 c 17.

Victims of crimes, reimbursement by convicted person as condition of work release or parole: RCW 7.68.120.

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

(1) "Department" shall mean the department of institutions.

(2) "Director" shall mean the director of the department of institutions.

(3) "State correctional institutions" shall mean and include the Washington state penitentiary; the Washington corrections center; the Washington state reformatory; the Clallam Bay honor camp in Clallam county; the Larch Mountain honor camp in Clark county; the Washougal honor camp in Clark [Skamania]

county; the Okanogan honor camp in Okanogan county; and such other state correctional institutions, camps or facilities as may hereafter be established pursuant to law under the jurisdiction of the department for the treatment of convicted felons sentenced to a term of confinement.

(4) "Prisoner" shall mean a person either male or female, convicted of a felony and sentenced by the superior court to a term of confinement and treatment in a state correctional institution under the jurisdiction of the department.

(5) "Superintendent" shall mean the superintendent of a state correctional institution, camp or other facility now or hereafter established under the jurisdiction of the department pursuant to law. [1967 c 17 § 1.]

Administrative departments and agencies—General provisions: RCW 43.17.010, 43.17.020.

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

72.65.020 Extension of limits of place of confinement authorized—Conditions. The director is authorized to extend the limits of the place of confinement and treatment within the state of any prisoner convicted of a felony, sentenced to a term of confinement and treatment by the superior court, and serving such sentence in a state correctional institution under the jurisdiction of the department, by authorizing a work release plan for such prisoner, permitting him, under prescribed conditions, to do any of the following:

(1) Work at paid employment.

(2) Participate in a vocational training program: *Provided*, That the tuition and other expenses of such a vocational training program shall be paid by the prisoner, by someone in his behalf, or by the department: *Provided further*, That any expenses paid by the department shall be recovered by the department pursuant to the terms of RCW 72.65.050.

(3) Interview or make application to a prospective employer or employers, or enroll in a suitable vocational training program.

Such work release plan of any prison shall require that he be confined during the hours not reasonably necessary to implement the plan, in (1) a state correctional institution, (2) a county or city jail, which jail has been approved after inspection pursuant to RCW 72.01.420, or (3) any other appropriate, supervised facility, after an agreement has been entered into between the department and the appropriate authorities of the facility for the housing of work release prisoners. [1967 c 17 § 2.]

72.65.030 Application of prisoner to participate in program—Contents of application. Any prisoner serving a sentence in a state correctional institution may make application to participate in the work release program to the superintendent of the institution in which he is confined. Such application shall set forth the name and address of his proposed employer or employers or shall specify the vocational training program, if any, in which he is enrolled. It shall include a statement to be executed by such prisoner that if his application be approved he agrees to abide faithfully by all terms and conditions of the particular work release plan adopted

for him. It shall further set forth such additional information as the department or the director shall require. [1967 c 17 § 3.]

72.65.040 Approval or denial of application—Adoption of work release plan—Terms and conditions—Revocation—Reapplication. The superintendent of the state correctional institution in which a prisoner who has made application to participate in the work release program is confined, after careful study of the prisoner's conduct, attitude and behavior within the institutions under the jurisdiction of the department, his criminal history and all other pertinent case history material, shall determine whether or not there is reasonable cause to believe that the prisoner will honor his trust as a work release participant. After having made such determination, the superintendent, in his discretion, may deny the prisoner's application, or recommend to the director, or such officer of the department as the director may designate, that the prisoner be permitted to participate in the work release program. The director or his designee, may approve, reject, modify, or defer action on such recommendation. In the event of approval, the director or his designee, shall adopt a work release plan for the prisoner, which shall constitute an extension of the limits of confinement and treatment of the prisoner when released pursuant thereto, and which shall include such terms and conditions as may be deemed necessary and proper under the particular circumstances. The plan shall be signed by the prisoner under oath that he will faithfully abide by all terms and conditions thereof. Further, as a condition, the plan shall specify where such prisoner shall be confined when not released for the purpose of the work release plan. At any time after approval has been granted to any prisoner to participate in the work release program, such approval may be revoked, and if the prisoner has been released on a work release plan, he may be returned to a state correctional institution, or the plan may be modified, in the sole discretion of the director or his designee. Any prisoner who has been initially rejected either by the superintendent or the director or his designee, may reapply for permission to participate in a work release program after a period of time has elapsed from the date of such rejection. This period of time shall be determined by the director or his designee, according to the individual circumstances in each case. [1967 c 17 § 4.]

72.65.050 Disposition of earnings. A prisoner employed under a work release plan shall surrender to the director, or to the superintendent of such state correctional institution as shall be designated by the director in the plan, his total earnings, (1) less payroll deductions required by law, or such payroll deductions as may reasonably be required by the nature of the employment and (2) less such amount which his work release plan specifies he should retain to help meet his personal needs, including costs necessary for his participation in the work release plan such as expenses for travel, meals, clothing, tools and other incidentals. The director, or the superintendent of the state correctional institution designated in the work release plan shall

deduct from such earnings, and make payments from such work release participant's earnings in the following order of priority:

(1) Reimbursement to the department for any expenses advanced for vocational training pursuant to RCW 72.65.020(2), or for expenses incident to a work release plan pursuant to RCW 72.65.090.

(2) Payment of board and room charges for the work release participant: *Provided*, That if the participant is housed at a state correctional institution, the average daily per capita cost for the operation of such correctional institution, excluding capital outlay expenditures, shall be paid from the work release participant's earnings to the general fund of the state treasury: *Provided further*, That if such work release participant is housed in another facility pursuant to agreement, then the charges agreed to between the department and the appropriate authorities of such facility shall be paid from the participant's earnings to such appropriate authorities.

(4) Payments for the necessary support of the work release participant's dependents, if any.

(5) Payments to creditors of the work release participant, which may be made at his discretion and request, upon proper proof of personal indebtedness.

(6) Payments to the work release participant himself upon parole or discharge, or for deposit in his personal account if returned to a state correctional institution for confinement and treatment. [1967 c 17 § 5.]

72.65.060 Earnings not subject to legal process. The earnings of a work release participant shall not be subject to garnishment, attachment or execution while such earnings are either in the possession of the employer or any state officer authorized to hold such funds. [1967 c 17 § 6.]

72.65.070 Wilfully failing to return—Deemed escapee and fugitive—Penalty. Any prisoner approved for placement under a work release plan who wilfully fails to return to the designated place of confinement at the time specified shall be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a felony and sentenced in accordance with the terms of *chapter 9.31 RCW. The provisions of this section shall be incorporated in every work release plan adopted by the department. [1967 c 17 § 7.]

*Reviser's note: "chapter 9.31 RCW" was repealed by 1975 1st ex.s. c 260 § 9A.92.010. For later enactment see chapter 9A.76 RCW.

72.65.080 Contracts with authorities for payment of expenses for housing participants—Leasing of housing facilities. The director may enter into contracts with the appropriate authorities for the payment of the cost of feeding and lodging and other expenses of housing work release participants. Such contracts may include any other terms and conditions as may be appropriate for the implementation of the work release program. In addition the director is authorized to acquire, by lease, appropriate facilities for the housing of work release participants and providing for their subsistence and supervision. Such work release participants placed in leased facilities shall

be required to reimburse the department of institutions the per capita cost of subsistence and lodging in accordance with the provisions and in the priority established by RCW 72.65.050(2). The location of such facilities shall be subject to the zoning laws of the city or county in which they may be situated. [1969 c 109 § 1; 1967 c 17 § 8.]

Effective date—1969 c 109: "This act shall become effective on July 1, 1969." [1969 c 109 § 2.]

72.65.090 Transportation, clothing, supplies, etc., for participants. The department may provide transportation for work release participants to the designated places of housing under the work release plan, and may supply suitable clothing and such other equipment, supplies and other necessities as may be reasonably needed for the implementation of the plans adopted for such participants: *Provided*, That costs and expenditures incurred for this purpose may be deducted by the department from the earnings of the participants. [1967 c 17 § 9.]

72.65.100 Powers and duties of director—Rules and regulations—Cooperation of other state agencies enjoined. The director is authorized to make rules and regulations for the administration of the provisions of this chapter to administer the work release program. In addition, the department shall:

(1) Supervise and consult with work release participants;

(2) Locate available employment or vocational training opportunities for qualified work release participants;

(3) Effect placement of work release participants under the program;

(4) Collect, account for and make disbursement from earnings of work release participants under the provisions of this chapter;

(5) Promote public understanding and acceptance of the work release program.

All state agencies shall cooperate with the department of institutions in the administration of the work release program as provided by this chapter. [1967 c 17 § 10.]

72.65.110 Earnings to be deposited in personal funds—Disbursements. All earnings of work release participants shall be deposited by the director, or the superintendent of a state correctional institution designated by the director in the work release plan, in personal funds. All disbursements from such funds shall be made only in accordance with the work release plans of such participants and in accordance with the provisions of this chapter. [1967 c 17 § 11.]

72.65.120 Participants not considered agents or employees of the state—Contracting with persons, companies, etc., for labor of participants prohibited—Employee benefits and privileges extended to. All participants who become engaged in employment or training under the work release program shall not be considered as agents, employees or involuntary servants of state and the department is prohibited from entering into a contract with any person, co-partnership, company or corporation for the labor of any participant under its

jurisdiction: *Provided*, That such work release participants shall be entitled to all benefits and privileges in their employment under the provisions of this chapter to the same extent as other employees of their employer, except that such work release participants shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged on expiration of their maximum sentences. [1967 c 17 § 12.]

72.65.130 Authority of board of prison terms and paroles not impaired. This chapter shall not be construed as affecting the authority of the board of prison terms and paroles pursuant to the provisions of chapter 9.95 RCW over any person who has been approved for participation in the work release program. [1971 ex.s. c 58 § 1; 1967 c 17 § 13.]

Effective date—1971 ex.s. c 58: See note following RCW 72.66.010.

72.65.900 Effective date—1967 c 17. This act shall become effective on July 1, 1967. [1967 c 17 § 14.]

Chapter 72.66 FURLOUGHES FOR PRISONERS

Sections

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72.66.014	Ineligibility grounds.
72.66.016	Minimum time served requirement.
72.66.018	Grounds for granting furlough.
72.66.022	Application—Contents.
72.66.024	Sponsor.
72.66.026	Furlough terms and conditions.
72.66.028	Furlough order—Contents.
72.66.032	Furlough identification card.
72.66.034	Applicant's personality and conduct—Examination.
72.66.036	Furlough duration—Extension.
72.66.038	Furlough infractions—Reporting—Regaining custody.
72.66.042	Emergency furlough—Waiver of certain requirements.
72.66.044	Application proceeding not deemed "contested case"
72.66.050	Revocation or modification of furlough plan—Reapplication.
72.66.060	Willfully failing to return—Deemed escapee and fugitive—Penalty.
72.66.070	Transportation, clothing and funds for furloughed prisoners.
72.66.080	Powers and duties of secretary—Certain agreements—Rules and regulations.
72.66.090	Violation or revocation of furlough—Authority of secretary to issue arrest warrants—Enforcement of warrants by law enforcement officers—Authority of probation and parole officer to suspend furlough.

Reviser's note: Throughout this chapter "this act" has been changed to "this chapter" "This act" [1971 ex.s. c 58] consists of this chapter and the 1971 amendment to RCW 72.65.130.

72.66.010 Definitions. As used in this chapter the following words shall have the following meanings:

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

(2) "Furlough" means an authorized leave of absence for an eligible resident, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or corrections official while on such leave.

(3) "Emergency furlough" means a specially expedited furlough granted to a resident to enable him to meet an emergency situation, such as the death or critical illness of a member of his family.

(4) "Resident" means a person convicted of a felony and serving a sentence for a term of confinement in a state correctional institution or facility, or a state approved work or training release facility.

(5) "Secretary" means the secretary of the department of social and health services, or his designee or designees. [1973 c 20 § 2; 1971 ex.s. c 58 § 2.]

Construction—Prior rules and regulations—1973 c 20: "The provisions of this 1973 amendatory act shall not affect the validity of any rule or regulation adopted prior to the effective date of this 1973 amendatory act, if such rule or regulation is not in conflict with any provision of this 1973 amendatory act." [1973 c 20 § 17.] This applies to the 1973 amendment to this section, to RCW 72.66.012 through 72.66.044, and to the repeal of RCW 72.66.020, 72.66.030 and 72.66.040.

The effective date of 1973 c 20 was June 7, 1973.

Effective date—1971 ex.s. c 58: "This act shall become effective on July 1, 1971." [1971 ex.s. c 58 § 11.] This applies to this chapter and RCW 72.65.130.

72.66.012 Granting of furloughs authorized. The secretary may grant a furlough but only if not precluded from doing so under RCW 72.66.014, 72.66.016, 72.66.018, 72.66.024, 72.66.034, or 72.66.036. [1973 c 20 § 3.]

72.66.014 Ineligibility grounds. A resident may apply for a furlough if he is not precluded from doing so under this section. A resident shall be ineligible to apply for a furlough if:

(1) He is not classified by the secretary as eligible for or on minimum security status; or

(2) His minimum term of imprisonment has not been set; or

(3) He has a valid detainer pending and the agency holding the detainer has not provided written approval for him to be placed on a furlough-eligible status. Such written approval may include either specific approval for a particular resident or general approval for a class or group of residents. [1973 c 20 § 4.]

72.66.016 Minimum time served requirement. A furlough shall not be granted to a resident if the furlough would commence prior to the time the resident has served the minimum amounts of time provided under this section:

(1) If his minimum term of imprisonment is longer than twelve months, he shall have served at least six months of the term;

(2) If his minimum term of imprisonment is less than twelve months, he shall have served at least ninety days and shall have no longer than six months left to serve on his minimum term;

(3) If he is serving a mandatory minimum term of confinement, he shall have served all but the last six months of such term. [1973 c 20 § 5.]

72.66.018 Grounds for granting furlough. A furlough may only be granted to enable the resident:

- (1) To meet an emergency situation, such as death or critical illness of a member of his family;
- (2) To obtain medical care not available in a facility maintained by the department;
- (3) To seek employment or training opportunities, but only when:
 - (a) There are scheduled specific work interviews to take place during the furlough;
 - (b) The resident has been approved for work or training release but his work or training placement has not occurred or been concluded; or
 - (c) When necessary for the resident to prepare a parole plan for a parole meeting scheduled to take place within one hundred and twenty days of the commencement of the furlough;
- (4) To make residential plans for parole which require his personal appearance in the community;
- (5) To care for business affairs in person when the inability to do so could deplete the assets or resources of the resident so seriously as to affect his family or his future economic security;
- (6) To visit his family for the purpose of strengthening or preserving relationships, exercising parental responsibilities, or preventing family division or disintegration; or
- (7) For any other purpose deemed to be consistent with plans for rehabilitation of the resident. [1973 c 20 § 6.]

72.66.022 Application—Contents. Each resident applying for a furlough shall include in his application for the furlough:

- (1) A furlough plan which shall specify in detail the purpose of the furlough and how it is to be achieved, the address at which the applicant would reside, the names of all persons residing at such address and their relationships to the applicant;
- (2) A statement from the applicant's proposed sponsor that he agrees to undertake the responsibilities provided in RCW 72.66.024; and
- (3) Such other information as the secretary shall require in order to protect the public or further the rehabilitation of the applicant. [1973 c 20 § 7.]

72.66.024 Sponsor. No furlough shall be granted unless the applicant for the furlough has procured a person to act as his sponsor. No person shall qualify as a sponsor unless he satisfies the secretary that he knows the applicant's furlough plan, is familiar with the furlough conditions prescribed pursuant to RCW 72.66.026, and submits a statement that he agrees to:

- (1) See to it that the furloughed person is provided with appropriate living quarters for the duration of the furlough;
- (2) Notify the secretary immediately if the furloughed person does not appear as scheduled, departs from the furlough plan at any time, becomes involved in serious difficulty during the furlough, or experiences problems that affect his ability to function appropriately;
- (3) Assist the furloughed person in other appropriate ways, such as discussing problems and providing transportation to job interviews; and

- (4) Take reasonable measures to assist the resident to return from furlough. [1973 c 20 § 8.]

72.66.026 Furlough terms and conditions. The terms and conditions prescribed under this section shall apply to each furlough, and each resident granted a furlough shall agree to abide by them.

- (1) The furloughed person shall abide by the terms of his furlough plan.
- (2) Upon arrival at the destination indicated in his furlough plan, the furloughed person shall, when so required, report to a state probation and parole officer in accordance with instructions given by the secretary prior to release on furlough. He shall report as frequently as may be required by the state probation and parole officer.
- (3) The furloughed person shall abide by all local, state and federal laws.
- (4) With approval of the state probation and parole officer designated by the secretary, the furloughed person may accept temporary employment during a period of furlough.
- (5) The furloughed person shall not leave the state at any time while on furlough.
- (6) Other limitations on movement within the state may be imposed as a condition of furlough.
- (7) The furloughed person shall not, in any public place, drink intoxicating beverages or be in an intoxicated condition. A furloughed person shall not enter any tavern, bar, or cocktail lounge.
- (8) A furloughed person who drives a motor vehicle shall:
 - (a) have a valid Washington driver's license in his possession,
 - (b) have the owner's written permission to drive any vehicle not his own or his spouse's,
 - (c) have at least minimum personal injury and property damage liability coverage on the vehicle he is driving, and
 - (d) observe all traffic laws.
- (9) Each furloughed person shall carry with him at all times while on furlough a copy of his furlough order prescribed pursuant to RCW 72.66.028 and a copy of the identification card issued to him pursuant to RCW 72.66.032.
- (10) The furloughed person shall comply with any other terms or conditions which the secretary may prescribe. [1973 c 20 § 9.]

72.66.028 Furlough order—Contents. Whenever the secretary grants a furlough, he shall do so by a special order which order shall contain each condition and term of furlough prescribed pursuant to RCW 72.66.026 and each additional condition and term which the secretary may prescribe as being appropriate for the particular person to be furloughed. [1973 c 20 § 10.]

72.66.032 Furlough identification card. The secretary shall issue a furlough identification card to each resident granted a furlough. The card shall contain the name of the resident and shall disclose the fact that he has been

granted a furlough and the time period covered by the furlough. [1973 c 20 § 11.]

72.66.034 Applicant's personality and conduct—Examination. Prior to the granting of any furlough, the secretary shall examine the applicant's personality and past conduct and determine whether or not he represents a satisfactory risk for furlough. The secretary shall not grant a furlough to any person whom he believes represents an unsatisfactory risk. [1973 c 20 § 12.]

72.66.036 Furlough duration—Extension. (1) The furlough or furloughs granted to any one resident may not exceed thirty consecutive days or a total of sixty days during any twelve-month period.

(2) Absent unusual circumstances, each first furlough and each second furlough granted to a resident shall not exceed a period of five days and each emergency furlough shall not exceed forty-eight hours plus travel time.

(3) A furlough may be extended within the maximum time periods prescribed under this section. [1973 c 20 § 13.]

72.66.038 Furlough infractions—Reporting—Regaining custody. Any employee of the department having knowledge of a furlough infraction shall report the facts to the secretary. Upon verification, the secretary shall cause the custody of the furloughed person to be regained, and for this purpose may cause a warrant to be issued. [1973 c 20 § 14.]

72.66.042 Emergency furlough—Waiver of certain requirements. In the event of an emergency furlough, the secretary may waive all or any portion of RCW 72.66.014(2), 72.66.016, 72.66.022, 72.66.024, and 72.66.026. [1973 c 20 § 15.]

72.66.044 Application proceeding not deemed "contested case". Any proceeding involving an application for a furlough shall not be deemed a "contested case" under the provisions of chapter 34.04 RCW, the Administrative Procedure Act. [1973 c 20 § 16.]

72.66.050 Revocation or modification of furlough plan—Reapplication. At any time after approval has been granted for a furlough to any prisoner, such approval or order of furlough may be revoked, and if the prisoner has been released on an order of furlough, he may be returned to a state correctional institution, or the plan may be modified, in the discretion of the secretary. Any prisoner whose furlough application is rejected may reapply for a furlough after such period of time has elapsed as shall be determined at the time of rejection by the superintendent or secretary, whichever person initially rejected the application for furlough, such time period being subject to modification. [1971 ex.s. c 58 § 6.]

72.66.060 Wilfully failing to return—Deemed escapee and fugitive—Penalty. Any furloughed prisoner who wilfully fails to return to the designated place

of confinement at the time specified in the order of furlough shall be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a felony and sentenced to a term of confinement of not more than ten years. The provisions of this section shall be incorporated in every order of furlough granted by the department. [1971 ex.s. c 58 § 7.]

72.66.070 Transportation, clothing and funds for furloughed prisoners. The department may provide or arrange for transportation for furloughed prisoners to the designated place of residence within the state and may, in addition, supply funds not to exceed forty dollars and suitable clothing, such clothing to be returned to the institution on the expiration of furlough. [1971 ex.s. c 58 § 8.]

72.66.080 Powers and duties of secretary—Certain agreements—Rules and regulations. The secretary may enter into agreements with any agency of the state, a county, a municipal corporation or any person, corporation or association for the purpose of implementing furlough plans, and, in addition, may make such rules and regulations in furtherance of this chapter as he may deem necessary. [1971 ex.s. c 58 § 9.]

72.66.090 Violation or revocation of furlough—Authority of secretary to issue arrest warrants—Enforcement of warrants by law enforcement officers—Authority of probation and parole officer to suspend furlough. The secretary may issue warrants for the arrest of any prisoner granted a furlough, at the time of the revocation of such furlough, or upon the failure of the prisoner to report as designated in the order of furlough. Such arrest warrants shall authorize any law enforcement, probation and parole or peace officer of this state, or any other state where such prisoner may be located, to arrest such prisoner and to place him in physical custody pending his return to confinement in a state correctional institution. Any state probation and parole officer, if he has reasonable cause to believe that a person granted a furlough has violated a condition of his furlough, may suspend such person's furlough and arrest or cause the arrest and detention in physical custody of the furloughed prisoner, pending the determination of the secretary whether the furlough should be revoked. The probation and parole officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending such furlough. Upon the basis of the report and such other information as the secretary may obtain, he may revoke, reinstate or modify the conditions of furlough, which shall be by written order of the secretary. If the furlough is revoked, the secretary shall issue a warrant for the arrest of the furloughed prisoner and his return to a state correctional institution. [1971 ex.s. c 58 § 10.]

Chapter 72.68

TRANSFER, REMOVAL, TRANSPORTATION—
DETENTION CONTRACTS

Sections

- 72.68.010 Transfer of prisoners.
 72.68.020 Transportation of prisoners.
 72.68.031 Transfer or removal of person committed to or confined in correctional institution to institution for mentally ill.
 72.68.032 Transfer or removal of person committed to or confined in institution for mentally ill to other institution.
 72.68.035 Transfer or removal of committed or confined persons—State institution or facility for the care of the mentally ill, defined.
 72.68.037 Transfer or removal of committed or confined persons—Record—Notice.
 72.68.040 Contracts with other governmental units for detention of felons convicted in this state.
 72.68.050 Contracts with other governmental units for detention of felons convicted in this state—Notice of transfer of prisoner.
 72.68.060 Contracts with other governmental units for detention of felons convicted in this state—Procedure when transferred prisoner's presence required in judicial proceedings.
 72.68.070 Contracts with other governmental units for detention of felons convicted in this state—Procedure regarding prisoner when contract expires.
 72.68.075 Contracts with other states or territories for care, confinement or rehabilitation of female prisoners.
 72.68.080 Federal prisoners, or from other state—Authority to receive.
 72.68.090 Federal prisoners, or from other state—Per diem rate for keep.
 72.68.100 Federal prisoners, or from other state—Space must be available.

Officers and guards as peace officers: RCW 9.94.050.

Transfer of child under sixteen convicted of crime amounting to felony: RCW 72.01.410.

Transfer of incorrigible juvenile: RCW 13.04.200, 72.12.050.

Transfer of juvenile from correctional institution to state hospital: RCW 72.01.390, 72.01.400.

Transfer of juvenile to correctional institution: RCW 72.13.070.

Western interstate corrections compact: Chapter 72.70 RCW.

72.68.010 Transfer of prisoners. Whenever in its judgment the best interests of the state or the welfare of any prisoner confined in any penal institution will be better served by his transfer to another institution the director may effect such transfer. [1959 c 28 § 72.68.010. Prior: 1955 c 245 § 2; 1935 c 114 § 5; RRS § 10249–5. Formerly RCW 9.95.180.]

72.68.020 Transportation of prisoners. (1) The director shall transport prisoners under guard:

(a) to and between the state penitentiary, the state reformatory and all other institutions under his supervision;

(b) from a county, city, or municipal jail to an institution mentioned in subdivision (a) of this subsection and to a county, city or municipal jail from an institution mentioned in subdivision (a) of this subsection.

(2) The director may employ necessary persons for such purpose. [1959 c 28 § 72.68.020. Prior: 1955 c 245 § 1. Formerly RCW 9.95.181.]

Officers and guards as peace officers: RCW 9.94.050.

72.68.031 Transfer or removal of person committed to or confined in correctional institution to institution for

mentally ill. When, in the judgment of the secretary of the department of social and health services, the welfare of any person committed to or confined in any state correctional institution or facility necessitates that such person be transferred or moved for observation, diagnosis or treatment to any state institution or facility for the care of the mentally ill, the secretary is authorized to order and effect such move or transfer: *Provided*, That the sentence of such person shall continue to run as if he remained confined in a correctional institution or facility, and that such person shall not continue so detained or confined beyond the maximum term to which he was sentenced: *Provided, further*, That the secretary and the board of prison terms and paroles shall adopt and implement procedures to assure that persons so transferred shall, while detained or confined at such institution or facility for the care of the mentally ill, be provided with substantially similar opportunities for parole or early release evaluation and determination as persons detained or confined in the state correctional institutions or facilities. [1972 ex.s. c 59 § 1.]

72.68.032 Transfer or removal of person committed to or confined in institution for mentally ill to other institution. When, in the judgment of the secretary of the department of social and health services, the welfare of any person committed to or confined in any state institution or facility for the care of the mentally ill necessitates that such person be transferred or moved for observation, diagnosis, or treatment, or for different security status while being observed, diagnosed or treated to any other state institution or facility for the care of the mentally ill, the secretary is authorized to order and effect such move or transfer. [1972 ex.s. c 59 § 2.]

72.68.035 Transfer or removal of committed or confined persons—State institution or facility for the care of the mentally ill, defined. As used in RCW 72.68.031 and 72.68.032, the phrase "state institution or facility for the care of the mentally ill" shall mean any hospital, institution or facility operated and maintained by the state of Washington which has as its principal purpose the care of the mentally ill, whether such hospital, institution or facility is physically located within or outside the geographical or structural confines of a state correctional institution or facility: *Provided*, That whether a state institution or facility for the care of the mentally ill be physically located within or outside the geographical or structural confines of a state correctional institution or facility, it shall be administered separately from the state correctional institution or facility, and in conformity with its principal purpose. [1972 ex.s. c 59 § 3.]

72.68.037 Transfer or removal of committed or confined persons—Record—Notice. Whenever a move or transfer is made pursuant to RCW 72.68.031 or 72.68.032, a record shall be made and the relatives, attorney, if any, and guardian, if any, of the person moved shall be notified of the move or transfer. [1972 ex.s. c 59 § 4.]

72.68.040 Contracts with other governmental units for detention of felons convicted in this state. The director may contract with the authorities of the federal government, or the authorities of any state of the United States or of any county or city in this state providing for the detention in an institution or jail operated by such governmental unit, of prisoners convicted of a felony in the courts of this state and sentenced to a term of imprisonment therefor in a state correctional institution for convicted felons under the jurisdiction of the department of institutions. After the making of a contract under this section, prisoners sentenced to a term of imprisonment in a state correctional institution for convicted felons may be conveyed by the superintendent or his assistants to the institution or jail named in the contract. The prisoners shall be delivered to the authorities of the institution or jail, there to be confined until their sentences have expired or they are otherwise discharged by law, paroled or until they are returned to a state correctional institution for convicted felons for further confinement. [1967 c 60 § 1; 1959 c 47 § 1; 1959 c 28 § 72.68.040. Prior: 1957 c 27 § 1. Formerly RCW 9.95.184.]

72.68.050 Contracts with other governmental units for detention of felons convicted in this state—Notice of transfer of prisoner. Whenever a prisoner who is serving a sentence imposed by a court of this state is transferred from a state correctional institution for convicted felons under RCW 72.68.040 through 72.68.070, the superintendent shall send to the clerk of the court pursuant to whose order or judgment the prisoner was committed to a state correctional institution for convicted felons a notice of transfer, disclosing the name of the prisoner transferred and giving the name and location of the institution to which the prisoner was transferred. The superintendent shall keep a copy of all notices of transfer on file as a public record open to inspection; and the clerk of the court shall file with the judgment roll in the appropriate case a copy of each notice of transfer which he receives from the superintendent. [1967 c 60 § 2; 1959 c 47 § 2; 1959 c 28 § 72.68.050. Prior: 1957 c 27 § 2. Formerly RCW 9.95.185.]

72.68.060 Contracts with other governmental units for detention of felons convicted in this state—Procedure when transferred prisoner's presence required in judicial proceedings. Should the presence of any prisoner confined, under authority of RCW 72.68.040 through 72.68.070, in an institution of another state or the federal government or in a county or city jail, be required in any judicial proceeding of this state, the superintendent of a state correctional institution for convicted felons or his assistants shall, upon being so directed by the director, or upon the written order of any court of competent jurisdiction, or of a judge thereof, procure such prisoner, bring him to the place directed in such order and hold him in custody subject to the further order and direction of the director, or of the court or of a judge thereof, until he is lawfully discharged from such custody. The superintendent or his assistants may, by direction of the director or of the court, or a judge thereof,

deliver such prisoner into the custody of the sheriff of the county in which he was convicted, or may, by like order, return such prisoner to a state correctional institution for convicted felons or the institution from which he was taken. [1967 c 60 § 3; 1959 c 47 § 3; 1959 c 28 § 72.68.060. Prior: 1957 c 27 § 3. Formerly RCW 9.95.186.]

72.68.070 Contracts with other governmental units for detention of felons convicted in this state—Procedure regarding prisoner when contract expires. Upon the expiration of any contract entered into under RCW 72.68.040 through 72.68.070, all prisoners of this state confined in such institution or jail shall be returned by the superintendent or his assistants to a state correctional institution for convicted felons of this state, or delivered to such other institution as the director has contracted with under RCW 72.68.040 through 72.68.070. [1967 c 60 § 4; 1959 c 47 § 4; 1959 c 28 § 72.68.070. Prior: 1957 c 27 § 4. Formerly RCW 9.95.187.]

72.68.075 Contracts with other states or territories for care, confinement or rehabilitation of female prisoners. The director is hereby authorized to contract for the care, confinement and rehabilitation of female prisoners of other states or territories of the United States, as more specifically provided in the Western Interstate Corrections Compact, as contained in chapter 72.70 RCW as now or hereafter amended. [1967 ex.s. c 122 § 12.]

72.68.080 Federal prisoners, or from other state—Authority to receive. All persons sentenced to prison by the authority of the United States or of any state or territory of the United States may be received by the department and imprisoned in the Washington state penitentiary or Washington state reformatory or the Washington correctional institution for women in accordance with the sentence of the court by which they were tried. The prisoners so confined shall be subject in all respects to discipline and treatment as though committed under the laws of this state. [1967 ex.s. c 122 § 10; 1959 c 28 § 72.68.080. Prior: 1951 c 135 § 1. Formerly RCW 72.08.350.]

72.68.090 Federal prisoners, or from other state—Per diem rate for keep. The director is authorized to enter into contracts with the proper officers or agencies of the United States and of other states and territories of the United States relative to the per diem rate to be paid the state of Washington for the conditions of the keep of each prisoner. [1959 c 28 § 72.68.090. Prior: 1951 c 135 § 2. Formerly RCW 72.08.360.]

72.68.100 Federal prisoners, or from other state—Space must be available. The director shall not enter into any contract for the care or commitment of any prisoner of the federal government or any other state unless there is vacant space and unused facilities in the Washington state penitentiary or reformatory or the Washington correctional institution for women. [1967 ex.s. c 122 §

11; 1959 c 28 § 72.68.100. Prior: 1951 c 135 § 3. Formerly RCW 72.08.370.]

Chapter 72.70
WESTERN INTERSTATE CORRECTIONS
COMPACT

Sections

72.70.010	Compact enacted—Provisions.
72.70.020	Director authorized to receive or transfer inmates pursuant to contract.
72.70.030	Responsibilities of courts, departments, agencies and officers.
72.70.040	Hearings.
72.70.050	Director may enter into contracts.
72.70.060	Director may provide clothing, etc., to inmate released in another state.
72.70.900	Severability—Liberal construction—1959 c 287.

Compacts for out-of-state supervision of parolees or probationers: RCW 9.95.270.

Interstate compact on juveniles: Chapter 13.24 RCW.

72.70.010 Compact enacted—Provisions. The Western Interstate Corrections Compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

WESTERN INTERSTATE CORRECTIONS
COMPACT

ARTICLE I—Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

ARTICLE II—Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, the Territory of Hawaii, or, subject to the limitation contained in Article VII, Guam.

(b) "Sending state" means a state party to this compact in which conviction was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(e) "Institution" means any prison, reformatory or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

ARTICLE III—Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that monies are legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV—Procedures and Rights

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the ending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in

and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V—Acts Not Reviewable In Receiving State; Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI—Federal Aid

Any state party to this compact may accept federal aid for use in connection with an institution or program, the use of which is or may be affected by this compact or any contract pursuant thereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision; provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII—Entry Into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of Congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

ARTICLE VIII—Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX—Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X—Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1959 c 287 § 1.]

72.70.020 Director authorized to receive or transfer inmates pursuant to contract. The director of the department of institutions is authorized to receive or transfer an inmate as defined in Article II(d) of the Western Interstate Corrections Compact to any institution as defined in Article II(e) of the Western Interstate Corrections Compact within this state or without this state, if this state has entered into a contract or contracts for

the confinement of inmates in such institutions pursuant to Article III of the Western Interstate Corrections Compact. [1959 c 287 § 2.]

72.70.030 Responsibilities of courts, departments, agencies and officers. The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the compact. [1959 c 287 § 3.]

72.70.040 Hearings. The director and members of the board of prison terms and paroles are hereby authorized and directed to hold such hearings as may be requested by any other party state pursuant to Article IV(f) of the Western Interstate Corrections Compact. Additionally, the director and members of the board of prison terms and paroles may hold out-of-state hearings in connection with the case of any inmate of this state confined in an institution of another state party to the Western Interstate Corrections Compact. [1959 c 287 § 4.]

72.70.050 Director may enter into contracts. The director of the department of institutions is hereby empowered to enter into such contracts on behalf of this state as may be appropriate to implement the participation of this state in the Western Interstate Corrections Compact pursuant to Article III thereof. No such contract shall be of any force or effect until approved by the attorney general. [1959 c 287 § 5.]

72.70.060 Director may provide clothing, etc., to inmate released in another state. If any agreement between this state and any other state party to the Western Interstate Corrections Compact enables the release of an inmate of this state confined in an institution of another state to be released in such other state in accordance with Article IV(g) of this compact, then the director is authorized to provide clothing, transportation and funds to such inmate in accordance with the provisions of RCW 72.08.343. [1959 c 287 § 6.]

72.70.900 Severability—Liberal construction—1959 c 287. The provisions of this act shall be severable and if any phrase, clause, sentence, or provision of this act is declared to be unconstitutional or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of this act and the applicability thereof to any other state, agency, person or circumstance shall, with respect to all severable matters, not be affected thereby. It is the legislative intent that the provisions of this act be reasonably and liberally construed. [1959 c 287 § 7.]

Chapter 72.98 CONSTRUCTION

Sections

- 72.98.010 Continuation of existing law.
72.98.020 Title, chapter, section headings not part of law.

72.98.030 Invalidity of part of title not to affect remainder.
 72.98.040 Repeals and saving.
 72.98.050 Bonding acts exempted.
 72.98.060 Emergency—1959 c 28.

72.98.010 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 28 § 72.98.010.]

72.98.020 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 28 § 72.98.020.]

72.98.030 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. [1959 c 28 § 72.98.030.]

72.98.040 Repeals and saving. The following acts or parts of acts are repealed:

- (1) Sections 1 through 10, pages 4 through 6, Laws of 1861;
- (2) Sections 1 through 5, pages 356 and 357, Laws of 1869;
- (3) Sections 1 through 9, pages 358 through 360, Laws of 1869;
- (4) Sections 1 through 26, pages 83 through 89, Laws of 1875;
- (5) Sections 2247 through 2275, Code 1881;
- (6) Sections 1 through 6, pages 37 through 38, Laws of 1883;
- (7) Sections 1 through 23, pages 82 through 85, Laws of 1883;
- (8) Sections 1 through 15, pages 141 through 144, Laws of 1885–6;
- (9) Sections 1 through 7, pages 144 through 145, Laws of 1885–6;
- (10) Sections 1 through 18, pages 152 through 155, Laws of 1885–6;
- (11) Chapter 60, Laws of 1888;
- (12) Chapter 62, Laws of 1888;
- (13) Sections 1 through 7, pages 269 through 271, Laws of 1889–90;
- (14) Sections 1 through 25, pages 271 through 277, Laws of 1889–90;
- (15) Sections 1 through 49, pages 482 through 495, Laws of 1889–90;
- (16) Chapter 147, Laws of 1891;
- (17) Chapter 131, Laws of 1895;
- (18) Chapter 67, Laws of 1897;
- (19) Chapter 119, Laws of 1901;
- (20) Chapter 167, Laws of 1901;
- (21) Chapter 171, Laws of 1901;
- (22) Chapter 110, Laws of 1903;
- (23) Chapter 90, Laws of 1907;
- (24) Chapter 156, Laws of 1907;
- (25) Chapter 166, Laws of 1907;
- (26) Sections 1, 2 and 4 through 7, chapter 97, pages 256 through 258, Laws of 1909;
- (27) Sections 1 through 10, chapter 97, pages 258 through 260, Laws of 1909;
- (28) Chapter 222, Laws of 1909;
- (29) Section 32, chapter 249, Laws of 1909;
- (30) Chapter 10, Laws of 1913;
- (31) Sections 1 through 5 and 8 through 14, chapter 157, Laws of 1913;
- (32) Chapter 81, Laws of 1915;
- (33) Chapter 106, Laws of 1915;
- (34) Sections 32, 41 and 43, chapter 7, Laws of 1921;
- (35) Chapter 48, Laws of 1921;
- (36) Chapter 74, Laws of 1925, extraordinary session;
- (37) Chapter 212, Laws of 1927;
- (38) Chapter 276, Laws of 1927;
- (39) Chapter 305, Laws of 1927;
- (40) Chapter 59, Laws of 1929;
- (41) Chapter 77, Laws of 1931;
- (42) Chapter 84, Laws of 1935;
- (43) Section 5, chapter 114, Laws of 1935;
- (44) Chapter 161, Laws of 1939;
- (45) Chapter 175, Laws of 1943;
- (46) Chapter 79, Laws of 1945;
- (47) Chapter 188, Laws of 1947;
- (48) Chapter 190, Laws of 1947;
- (49) Chapter 211, Laws of 1947;
- (50) Chapter 114, Laws of 1949;
- (51) Sections 20 and 52, chapter 198, Laws of 1949;
- (52) Chapter 135, Laws of 1951;
- (53) Sections 6 through 16, 40 through 50 and 65 through 69, chapter 139, Laws of 1951;
- (54) Chapter 234, Laws of 1951;
- (55) Chapter 217, Laws of 1953;
- (56) Chapter 232, Laws of 1953;
- (57) Chapter 77, Laws of 1955;
- (58) Chapter 94, Laws of 1955;
- (59) Chapter 104, Laws of 1955;
- (60) Chapter 128, Laws of 1955;
- (61) Chapter 136, Laws of 1955;
- (62) Chapter 195, Laws of 1955;
- (63) Chapter 230, Laws of 1955;
- (64) Chapter 240, Laws of 1955;
- (65) Chapter 242, Laws of 1955;
- (66) Chapter 245, Laws of 1955;
- (67) Chapter 247, Laws of 1955;
- (68) Chapter 248, Laws of 1955;
- (69) Chapter 260, Laws of 1955;
- (70) Chapter 314, Laws of 1955;
- (71) Chapter 318, Laws of 1955;
- (72) Chapter 19, Laws of 1957;
- (73) Chapter 21, Laws of 1957;
- (74) Chapter 25, Laws of 1957;
- (75) Chapter 27, Laws of 1957;
- (76) Chapter 29, Laws of 1957;
- (77) Chapter 30, Laws of 1957;
- (78) Chapter 54, Laws of 1957;
- (79) Chapter 61, Laws of 1957;
- (80) Chapter 102, Laws of 1957;
- (81) Section 5, chapter 115, Laws of 1957;
- (82) Chapter 136, Laws of 1957;
- (83) Chapter 188, Laws of 1957;

- (84) Chapter 217, Laws of 1957;
- (85) Chapter 225, Laws of 1957;
- (86) Chapter 272, Laws of 1957;
- (87) Sections 2 and 3, chapter 297, 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 28 § 72.98.040.]

72.98.050 Bonding acts exempted. This act shall not repeal nor otherwise affect the provisions of the institutional bonding acts (chapter 230, Laws of 1949 and chapters 298 and 299, Laws of 1957). [1959 c 28 § 72.98.050.]

Bond acts: Chapter 72.99 RCW.

72.98.060 Emergency—1959 c 28. 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, with the exception of RCW 72.01.280 the effective date of which section is July 1, 1959. [1959 c 28 § 72.98.060.]

Chapter 72.99 BOND ACTS

Sections

GENERAL OBLIGATION BOND ACT—1949

- 72.99.010 Bonds authorized—Purpose—Form—Terms—Sale.
- 72.99.020 Proceeds of bond sales—Deposit in fund.
- 72.99.025 Investment of current surpluses in building construction fund.
- 72.99.030 Appropriation from fund—Purpose.
- 72.99.040 Institutional building bond redemption fund created—Purpose—Deposits—Priority as to sales tax revenue—Enforcement.
- 72.99.050 Sales tax not exclusive method of raising money.
- 72.99.060 Bonds are legal investment for public funds.

STATE BUILDING CONSTRUCTION ACT

- 72.99.070 Short title.
- 72.99.080 Definitions.
- 72.99.090 Contracts for construction authorized—Cost limited.
- 72.99.100 Limited obligation bonds—Form, term, sale, payment, legal investment, etc.
- 72.99.110 Deposit of proceeds from bond sale—Appropriation.
- 72.99.120 State building construction bond redemption fund—Purpose, deposits—Priority as to sales tax revenue.
- 72.99.130 Bonds not a general obligation—Legislature may provide additional means for payment.
- 72.99.140 Certain projects authorized.
- 72.99.150 Acceptance of grants.
- 72.99.160 Provisions additional to other laws—Liberal construction.

GENERAL OBLIGATION BOND ACT—1957

- 72.99.170 General obligation bonds authorized—Issuance, form, term, sale, etc.
- 72.99.180 Proceeds of bonds and other moneys—Deposit.
- 72.99.190 Appropriation.
- 72.99.200 Institutional building bond redemption fund—Purpose, deposits—Priority as to sales tax revenue—Enforcement.

- 72.99.210 Legislature may provide additional means for payment.
- 72.99.220 Bonds are legal investment.

Reviser's note: The bond acts codified herein as RCW 72.99.010 through 72.99.220 were not included in the 1959 reenactment of Title 72 RCW (chapter 28, Laws of 1959). Although not so reenacted, their provisions were expressly saved, see RCW 72.98.050.

GENERAL OBLIGATION BOND ACT—1949

72.99.010 Bonds authorized—Purpose—Form—Terms—Sale. For the purpose of providing needful buildings at the state operated charitable, educational and penal institutions presently operated by the department of public institutions, the state finance committee is hereby authorized to issue, at any time prior to January 1, 1960, general obligation bonds of the state of Washington in the sum of twenty million dollars, or so much thereof as shall be required to finance the program herein set out, to be paid and discharged within twenty years of the date of issuance.

The state finance committee is authorized to prescribe the form of such bonds, and the time of sale of all or any portion or portions of such bonds, and the conditions of sale and issuance thereof: *Provided*, That none of the bonds herein authorized shall be sold for less than the par value thereof, nor shall they bear interest at a rate in excess of three percent per annum.

The bonds shall pledge the full faith and credit of the state of Washington and contain an unconditional promise to pay the principal and interest when due. The committee may provide that the bonds, or any of them, may be called prior to the due date thereof under such terms and conditions as it may determine. The state finance committee may authorize the use of facsimile signatures in the issuance of the bonds. [1949 c 230 § 1; No RRS.]

Act to be submitted: "This act shall be submitted to the people for their adoption and ratification, or rejection, at the general election to be held in this state on the Tuesday next succeeding the first Monday in November, 1950, in accordance with the provisions of section 3, Article VIII of the State Constitution; and in accordance with the provisions of section 1, Article II of the State Constitution, as amended and the laws adopted to facilitate the operation thereof." [1949 c 230 § 7.] This applies to RCW 72.99.010 through 72.99.060.

*Facsimile signatures: RCW 39.44.100 through 39.44.102.
State finance committee: Chapter 43.33 RCW.*

72.99.020 Proceeds of bond sales—Deposit in fund. The proceeds from the sale of the bonds authorized herein, together with all grants, donations, transferred funds and all other moneys which the state finance committee may direct the state treasurer to deposit therein shall be deposited in the institutional building construction fund. [1949 c 230 § 2; No RRS.]

Institutional building construction fund abolished and moneys transferred to institutional building construction account in state general fund: RCW 43.79.330 through 43.79.334.

State finance committee: Chapter 43.33 RCW.

72.99.025 Investment of current surpluses in building construction fund. See RCW 28A.47.210 through 28A.47.230.

72.99.030 Appropriation from fund—Purpose. The sum of twenty million dollars, or so much thereof as may

be necessary, is appropriated from the institutional building construction fund to the state finance committee to be expended by the committee for the payment of expense incident to the sale and issuance of the bonds authorized herein and through allotments made, in its discretion, to the director of public institutions for the purpose of constructing needful buildings at the state operated charitable, educational and penal institutions. [1949 c 230 § 3; No RRS.]

State finance committee: Chapter 43.33 RCW.

72.99.040 Institutional building bond redemption fund created—Purpose—Deposits—Priority as to sales tax revenue—Enforcement. The institutional building bond redemption fund is hereby created in the state treasury, which fund shall be exclusively devoted to the payment of interest on and retirement of the bonds authorized by RCW 72.99.010 through 72.99.060. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet bond retirement and interest requirements and the state treasurer shall thereupon deposit such amount in said institutional building bond redemption fund from moneys transmitted to the state treasurer by the department of revenue and certified by the department of revenue to be sales tax collections and such amount certified by the state finance committee to the state treasurer shall be a first and prior charge against all retail sales tax revenues of the state of Washington.

The owner and holder of each of said bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require and compel the transfer and payment of funds as directed herein. [1975 1st ex.s. c 278 § 36; 1949 c 230 § 4; No RRS.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Institutional building bond redemption fund, 1957 act: RCW 72.99.200.

Mandamus, generally: Chapter 7.16 RCW.

State finance committee: Chapter 43.33 RCW.

72.99.050 Sales tax not exclusive method of raising money. The legislature may provide additional means for raising moneys for the payment of the interest and principal of the bonds authorized herein and RCW 72.99.010 through 72.99.060 shall not be deemed to provide an exclusive method for such payment. [1949 c 230 § 5; No RRS.]

72.99.060 Bonds are legal investment for public funds. The bonds herein authorized shall be a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1949 c 230 § 6; No RRS.]

STATE BUILDING CONSTRUCTION ACT

72.99.070 Short title. RCW 72.99.070 through 72.99.160 shall be known as the state building construction act. [1957 c 298 § 1.]

Severability—1957 c 298: "If any part of this act shall be held unconstitutional, such invalidity shall not affect any other part. It is hereby declared that had any section, paragraph, sentence, clause, phrase, or word as to which this act is declared invalid been eliminated from the act at the time the same was considered, the act would have nevertheless been enacted with such portions eliminated." [1957 c 298 § 11.] This applies to RCW 72.99.070 through 72.99.160.

72.99.080 Definitions. The following terms, whenever used or referred to in RCW 72.99.070 through 72.99.160, shall have the following meanings, excepting in those instances where the context clearly indicates otherwise:

(1) "Agency" shall mean any board, commission, committee, director, or other agency charged with the supervision and control of any department, institution, or agency of the state of Washington.

(2) "Fund" shall mean the special fund created by RCW 72.99.070 through 72.99.160 to be known as the state building construction bond retirement fund.

(3) "Bonds" shall mean the limited obligation bonds issued pursuant to RCW 72.99.070 through 72.99.160 and payable only out of the special fund created herein.

(4) "Project" shall mean the construction, completion, reconstruction, remodeling, rehabilitation, or improvement of any building or other facility and the acquisition of land therefor authorized by the legislature to be financed under the provisions of RCW 72.99.070 through 72.99.160. [1957 c 298 § 2.]

72.99.090 Contracts for construction authorized—Cost limited. The agencies in RCW 72.99.070 through 72.99.160 mentioned are each empowered to contract for the construction of the particular project herein authorized by the legislature to be constructed and financed as in RCW 72.99.070 through 72.99.160 provided. The cost of each of the projects herein authorized shall not exceed the amounts set forth in RCW 72.99.070 through 72.99.160. [1957 c 298 § 3.]

72.99.100 Limited obligation bonds—Form, term, sale, payment, legal investment, etc. For the purpose of providing means for paying the costs of the projects authorized by RCW 72.99.070 through 72.99.160, and to pay costs incident to the issuance and sale of bonds by RCW 72.99.070 through 72.99.160, the state finance committee is authorized to issue and sell limited obligation bonds of the state of Washington. 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 said 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 RCW 72.99.070 through 72.99.160. Said bonds:

- (1) Shall be
 - (a) Either registered or in coupon form; and
 - (b) Issued in denominations of not less than one hundred dollars;
- (2) Shall state
 - (a) The date of issue; and
 - (b) The series of the issue and be consecutively numbered within the series; and

(c) That the bond is payable out of the special fund established for the purposes of RCW 72.99.070 through 72.99.160;

(3) Shall bear interest, payable either annually or semiannually, as the state finance committee may determine, at a rate not to exceed six percent per annum;

(4) Shall be payable solely out of the special fund created for the purposes of RCW 72.99.070 through 72.99.160;

(5) Shall be payable at such times over a period of not to exceed thirty years from date of issuance, in such manner and at such place or places, and with such reserved rights of prior redemption, as the state finance committee may prescribe to be specified therein;

(6) Shall be signed either manually or with a printed 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.

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 that portion of the retail sales tax allocated to said fund in the manner prescribed in RCW 72.99.070 through 72.99.160. Said bonds and the interest thereon shall, so long as any portion thereof shall remain unpaid, constitute a prior charge upon the retail sales tax allocated to the state building construction bond redemption fund herein provided for, subject to and inferior only to the charge thereon created by chapters 229 and 230, Laws of 1949 [RCW 28A.47-.130–28A.47.180 and 72.99.010–72.99.060], and shall be payable at such places as the state finance committee shall provide. All bonds issued under the provisions of RCW 72.99.070 through 72.99.160 may be sold in such manner and such amounts and at such times and on such terms and conditions as the state finance committee may prescribe: *Provided*, That if such 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 provision of RCW 72.99.070 through 72.99.160 shall be legal investment for any of the funds of the state not restricted by any constitutional prohibition. [1957 c 298 § 4.]

Facsimile signatures: RCW 39.44.100 through 39.44.102.

State finance committee: Chapter 43.33 RCW.

72.99.110 Deposit of proceeds from bond sale—
Appropriation. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the state building construction account in the state general fund, and shall be used for the purposes, and by the agencies authorized by RCW 72.99.070 through 72.99.160. For the purpose of carrying out the provision of RCW 72.99.070 through 72.99.160, there is hereby appropriated from the state building construction

account the sum of twenty million two hundred and fourteen thousand nine hundred ninety-six dollars, or so much thereof as shall be necessary. [1957 c 298 § 5.]

72.99.120 State building construction bond redemption fund—**Purpose, deposits—****Priority as to sales tax revenue.** There is hereby created in the state treasury a special fund to be known as the state building construction bond redemption fund, which fund shall be exclusively devoted for the retirement of said bonds upon maturity and the payment of interest as it falls due. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet bond retirement and interest requirements, and the state treasurer shall thereupon deposit such amount in said state building construction bond redemption fund from moneys transmitted to the state treasurer by the department of revenue and certified by the department of revenue to be sales tax collections, and such amount certified by the state finance committee to the state treasurer shall be a prior charge against all retail sales tax revenues of the state of Washington, subject to and inferior only to the charges thereon created by chapters 229 and 230, Laws of 1949 [RCW 28A.47.130–28A.47.180 and 72.99.010–72.99.060]. Said bond redemption fund shall be kept segregated from all moneys in the state treasury and shall, while any of such bonds or interest thereon remains unpaid, be available solely for the payment thereof. As a part of the contract of sale of the bonds herein authorized, the state undertakes to continue to levy and collect a tax on retail sales equal to that portion thereof allocated to said fund as provided in RCW 72.99.070 through 72.99.160, and to place the proceeds thereof in the state building construction bond redemption fund and to make said fund available to meet said payments when due until all bonds and the interest thereon authorized under RCW 72.99.070 through 72.99.160 shall have been paid. [1975 1st ex.s. c 278 § 37; 1957 c 298 § 6.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

72.99.130 Bonds not a general obligation—**Legislature may provide additional means for payment.** The bonds authorized to be issued pursuant to the provisions of RCW 72.99.070 through 72.99.160 shall not be general obligations of the state of Washington, but shall be limited obligation bonds payable only from the special fund created for their payment derived from the tax on retail sales as herein provided. The legislature may provide additional means for raising money for the payment of interest and principal of said bonds. RCW 72.99.070 through 72.99.160 shall not be deemed to provide an exclusive method for such payment. The power given to the legislature by this section to provide additional means for raising money is permissive, and shall not in any way be construed as a pledge of the general credit of the state of Washington. [1957 c 298 § 7.]

72.99.140 Certain projects authorized. The legislature hereby authorizes the construction of the following

projects to be financed under the provisions of RCW 72.99.070 through 72.99.160:

At the University of Washington:
 Completing Construction of Teaching Hospital \$2,850,000.00

By the Military Department:
 Capital Outlays to Armories \$ 325,000.00
 Capital Outlays, Major Repairs and Betterments \$ 332,640.00

By the Department of Fisheries:
 Capital Outlays, Major Repairs and Betterments \$ 715,000.00

By the Department of Institutions:
 Purchase of Land and Buildings and Cost of Materials and Equipment for Diagnostic and Treatment Center \$ 780,100.00

At the Cedar Creek Youth Forestry Camp:
 Construction and Equipment of Dormitory and Administration Building, Dining Hall and One Supervisor's Duplex Cottage and Construction of Site for Forestry Camp \$ 200,000.00

At Eastern State Hospital:
 Remodel, Repair and Equip Four Ward Buildings \$ 190,000.00
 Remodel and Equip Main Kitchen and Meat Preparation Area \$ 35,000.00
 Additions and Repairs to Existing Irrigation System \$ 16,000.00
 For Repairs to existing Paving \$ 25,000.00
 Construction of Incinerator and Paving of Adjacent Area \$ 6,000.00
 New Well, including Pump, Piping and Electrical Facilities \$ 130,000.00

At Green Hill School:
 Construction and Equipment of Two Cottage Dormitories \$ 277,600.00

At Lakeland Village:
 Repairs to Buildings and Structures and Renovations and Additions to Plant Utilities \$ 213,000.00
 To Complete the Construction of Douglas Hall \$ 61,000.00

At Maple Lane School:
 Construction and Equipping of One Cottage \$ 110,000.00

At Northern State Hospital:
 Replace Main Waterline Between Reservoirs \$ 46,000.00
 Repairs to Administration and Ward Buildings \$ 50,000.00
 Construct Covering for Walks \$ 30,000.00
 Construction of Emergency Exits for Four Ward Buildings \$ 6,750.00

At Washington State Penitentiary:
 Construction and Equipping of Admission and Security Center \$1,900,000.00
 Construction and Equipping of Addition to Industries and Maintenance Building \$ 150,000.00
 Remodel and Repair Seven-wing Locking Devices \$ 65,000.00
 Construction and Equipping of Vocational Shop Building \$ 225,000.00
 Purchase and Installation of Shop Equipment \$ 45,000.00
 Purchase and Install Industrial Equipment \$ 200,000.00
 Construction of Two Additional Bays to Present Industrial Building \$ 80,000.00
 Remodel and Expand Electric Transmission System \$ 47,500.00

At Rainier State School:
 Extend and Equip Laundry \$ 173,000.00
 (Construction to be supervised by Department of General Administration Architect.)
 Remodel, Extend and Equip Kitchen \$ 162,000.00
 (Construction to be supervised by Department of General Administration Architect.)
 Remodel Halls to Provide Classrooms, Including Equipment and Services \$ 45,000.00
 (Construction to be supervised by Department of General Administration Architect.)
 Construct and Equip Addition to Maintenance Shops \$ 13,300.00
 Modify Storm Sewer System \$ 35,000.00

At Washington State Reformatory:
 Construct and Furnish One Personnel Housing Unit \$ 25,000.00
 Remodel and Repair Existing Buildings, Including Equipment \$ 100,000.00
 Purchase and Installation of Equipment for New Industries \$ 50,000.00

At State Soldiers' Home:
 Remodeling and Equipping Old Hospital \$ 80,000.00

At Western State Hospital:
 Construction of New Juvenile Building \$ 472,500.00
 (Plans and Supervision Furnished by Department of General Administration.)

At State College of Washington:
 Construction of Veterinary Clinic \$1,316,750.00
 Construction of Poultry and Dairy Buildings \$ 600,000.00

Construction of Incinerator	\$ 150,000.00
Construction of Swine Barn for Animal Husbandry	\$ 44,000.00
Partial Construction of Plant Science Building	\$1,900,000.00
Complete the Construction and Equipment of Agronomy Seed House	\$ 68,400.00
Purchase of Ninety Acres Agri- cultural Land	\$ 27,000.00
Agricultural land—Skagit	\$ 34,000.00
Pullman Land Enclosed by Cam- pus	\$ 110,000.00
At Central Washington College: Completion of Classroom Build- ing	\$ 36,000.00
Improvements to Present Cam- pus Area	\$ 26,200.00
Conversion of Coal Burner to Natural Gas	\$ 16,000.00
Purchase and Installation of Closed Circuit Television	\$ 49,336.00
Purchase of Land	\$ 181,620.00
Extension of Utilities	\$ 15,000.00
Construction of Health and Physical Education Building	\$1,300,000.00
Site Development for Above Building and Outdoor Physical Education Facilities	\$ 125,500.00
At Eastern Washington College: Capital Outlays, Major Repairs and Betterments, Including Maintenance Sheds	\$ 275,000.00
Construction and Equipment and Purchase of Land for Labora- tory School	\$ 422,000.00
At Western Washington College: Repairs to Buildings and Struc- tures	\$ 25,000.00
Purchase of Land and Site Improvements	\$ 131,600.00
Construction and Equipment of Science Building	\$2,216,800.00
At the School for the Blind at Vancouver: Construction of and Equipment for New School Building	\$ 520,500.00

[1957 c 298 § 8.]

72.99.150 Acceptance of grants. In addition to the power and authority conferred by RCW 72.99.070 through 72.99.160, any agency authorized to construct the projects herein authorized shall have the authority and power to accept grants from the United States government, or any federal or state agency or instrumentality, or any public or private corporation, association, or person to aid in defraying the costs of any such project, which grant may be utilized in addition to the specific authorization of funds herein provided in the completion of such project. [1957 c 298 § 9.]

72.99.160 Provisions additional to other laws—
Liberal construction. RCW 72.99.070 through 72.99.160

shall be deemed to provide an additional and alternative method for the doing of the things authorized herein and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing. RCW 72.99.070 through 72.99.160 being necessary for the welfare of the state of Washington and its inhabitants shall be liberally construed to effect the purposes thereof. Any section or provision of RCW 72.99.070 through 72.99.160 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 funds, or otherwise participate in programs of the federal government or any of its agencies or instrumentalities furthering the purposes of RCW 72.99.070 through 72.99.160. [1957 c 298 § 10.]

GENERAL OBLIGATION BOND ACT—1957

72.99.170 General obligation bonds authorized—
Issuance, form, term, sale, etc. For the purpose of providing needful buildings at the state operated charitable, educational and penal institutions presently operated by the department of institutions and at state supported institutions of higher learning the state finance committee is hereby authorized to issue, at any time prior to January 1, 1970, general obligation bonds of the state of Washington in the sum of twenty-five million dollars, or so much thereof as shall be required to finance the program above set forth to be paid and discharged within twenty years of the date of issuance.

The state finance committee is authorized to prescribe the form of such bonds and the time of sale of all or any portion or portions of such bonds, and the conditions of sale and issuance thereof: *Provided*, That none of the bonds herein authorized shall be sold for less than the par value thereof, nor shall they bear interest at a rate in excess of four percent per annum.

The bonds shall pledge the full faith and credit of the state of Washington and contain an unconditional promise to pay the principal and interest when due. The committee may provide that the bonds, or any of them, may be called prior to the due date thereof under such terms and conditions as it may determine. The state finance committee may authorize the use of facsimile signatures in the issuance of the bonds. [1957 c 299 § 1.]

Act to be submitted: "This act shall be submitted to the people for their adoption and ratification, or rejection, at the general election to be held in this state on the Tuesday next succeeding the first Monday in November, 1958, in accordance with the provisions of section 3, Article VIII of the state Constitution; and in accordance with the provisions of section 1, Article II of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof." [1957 c 299 § 7.] This applies to RCW 72.99.170 through 72.99.220.
Facsimile signatures: RCW 39.44.100–39.44.102.
State finance committee: Chapter 43.33 RCW.

72.99.180 Proceeds of bonds and other moneys—
Deposit. The proceeds from the sale of the bonds authorized herein, together with all grants, donations, transferred funds and all other moneys which the state finance committee may direct the state treasury to deposit therein shall be deposited in the institutional

building construction fund account in the state general fund. [1957 c 299 § 2.]

72.99.190 Appropriation. The sum of twenty-five million dollars, or so much thereof as may be necessary, is appropriated from the institutional building construction account in the state general fund to the state finance committee to be expended by the committee for the payment of expense incident to the sale and issuance of the bonds authorized herein and through allotments made, in its discretion, to the director of public institutions [director of institutions] for the purpose of constructing such buildings at the state charitable, educational and penal institutions, and at the state supported institutions of higher learning as the state finance committee may direct on or before September 1, 1958. [1957 c 299 § 3.]

72.99.200 Institutional building bond redemption fund—Purpose, deposits—Priority as to sales tax revenue—Enforcement. The institutional building bond redemption fund is hereby created in the state treasury, which fund shall be exclusively devoted to the payment of interest on and retirement of the bonds authorized by RCW 72.99.170 through 72.99.220. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet bond retirement and interest requirements and the state treasurer shall thereupon deposit such amount in said institutional building bond redemption fund from moneys transmitted to the state treasurer by the department of revenue and certified by the department of revenue to be sales tax collections and such amount certified by the state finance committee to the state treasurer shall be a prior charge against all retail sales tax revenues of the state of Washington, except that portion thereof heretofore pledged for the payment of bond principal and interest.

The owner and holder of each of said bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require and compel the transfer and payment of funds as directed herein. [1975 1st ex.s. c 278 § 38; 1957 c 299 § 4.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

72.99.210 Legislature may provide additional means for payment. The legislature may provide additional means for raising moneys for the payment of the interest and principal of the bonds authorized herein and RCW 72.99.170 through 72.99.220 shall not be deemed to provide an exclusive method for such payment. [1957 c 299 § 5.]

72.99.220 Bonds are legal investment. The bonds herein authorized shall be a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1957 c 299 § 6.]

TITLE 73

VETERANS AND VETERANS' AFFAIRS

Chapters

- 73.01 Department of veterans affairs.
- 73.04 General provisions.
- 73.08 Veterans' relief.
- 73.12 Veterans' loan insurance.
- 73.16 Employment and reemployment.
- 73.20 Acknowledgments and powers of attorney.
- 73.24 Burial.
- 73.28 Arms to Sons of Veterans.
- 73.32 Veterans' bonus—1949 act.
- 73.33 Veterans' bonus—1955 act.
- 73.34 Veterans' bonus—1972 act.
- 73.36 Uniform veterans' guardianship act.

Colony of the state soldiers' home: RCW 72.36.040.

Elections, absentee service voters: Chapter 29.39 RCW.

Estates of absentees: Chapter 11.80 RCW.

Firemen's retirement, credit for military service: RCW 41.16.220, 41.18.150.

Fraternal insurance, veterans' societies: RCW 48.36.310.

Hunting and fishing license, free to certain veterans: RCW 77.32.230.

Liquor control board employment, veteran preference: RCW 66.08.016.

Mental illness hospitalization act: Chapter 71.02 RCW.

Militia and military affairs: Title 38 RCW.

Nuncupative wills: RCW 11.12.020.

Oaths, military personnel, who may administer: RCW 38.38.844.

Police retirement, credit for military service: RCW 41.20.050.

Professional, occupational licenses, moratorium: RCW 43.24.130.

Property taxation exemptions: RCW 84.36.030.

Public employment, veterans' preference in examinations: RCW 41.04.010.

Public institutions of higher education, children of certain citizens missing in action or prisoners of war exempt from tuition—Limitations—Procedure: RCW 28B.10.265.

Soldiers' and veterans' homes: Chapter 72.36 RCW.

State employees' retirement, credit for military service: RCW 41.40.170.

State employees' retirement, exception from membership: RCW 41.40.120(6).

State hospitals for insane, war veterans: RCW 73.36.165.

State-wide city employees' retirement, prior service credit: RCW 41.44.120(4).

Teachers' retirement, credit for military service: RCW 41.32.260.

Veterans' rehabilitation council: Chapter 43.61 RCW.

Vocational-technical schools, children of certain citizens missing in action or prisoners of war exempt from tuition—Limitations—Procedure: RCW 28A.09.200.

Wills, proof when witness in war service: RCW 11.20.040.

Wills, who may make: RCW 11.12.010.

Chapter 73.01

DEPARTMENT OF VETERANS AFFAIRS (See chapter 43.60A RCW)

Chapter 73.04

GENERAL PROVISIONS

Sections

- 73.04.010 Pension papers—Fees not to be charged.
- 73.04.020 Pension papers—Fees not to be charged—Penalty.
- 73.04.030 Recording honorable discharges without charge.
- 73.04.040 Recording honorable discharges without charge—Certified copy as proof.
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- 73.04.050 Right to peddle, vend, sell goods without license—License fee on business established under act of congress prohibited.
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- 73.04.090 Benefits, preferences, exemptions, etc., limited to veterans subject to full, continuous military control.
- 73.04.100 Credit toward law degree.
- 73.04.110 Free motor vehicle license for certain disabled veterans.
- 73.04.120 Certificate stating marital status available free.
- 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.

Veterans classified as resident students: RCW 28B.15.014.

Vietnam veterans' exemption from tuition and fees at institutions of higher education: RCW 28B.15.620.

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 § 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 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 an 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 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—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.
73.16.015	Enforcement of preference—Civil action.
73.16.020	Penalty for failure to comply.
73.16.031	Reemployment—Definitions.
73.16.033	Reemployment of returned veterans and others.
73.16.035	Eligibility requirements.
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 widows or widowers, 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: *Provided*, That spouses of honorably discharged veterans who have a service connected permanent and total disability shall also be preferred for appointment and employment. [1975 1st ex.s. c 198 § 1; 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.

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—Account 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—Account 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 account, which is hereby established in the state general fund. 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. [1975-'76 2nd ex.s. c 123 § 2; 1949 c 180 § 3; Rem. Supp. 1949 § 10747c.]

Expiration date—1975-'76 2nd ex.s. c 123: See notes following RCW 43.84.090.

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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 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.
73.33.070	Executive officer of veterans' rehabilitation council to assist auditor.
73.33.080	Warrants may be issued in anticipation of sale of bonds.
73.33.090	Funds from which compensation and expenses are payable—Appropriation.
73.33.100	Penalty for false claims, representations.
73.33.110	Free official service—Discounting certificates—Penalty.
73.33.120	Terminal dates for filing, processing applications.
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 noncombatant 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 account.
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—Applications.
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 received the Viet Nam Service Medal or Armed Forces Expeditionary Medal (Viet Nam) or 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 March 28, 1973, and who has been honorably separated or discharged from such service, 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 such service between said dates the sum of two hundred fifty dollars for service in the Viet Nam combat zone and said person received the Viet Nam Service Medal or Armed Forces Expeditionary Medal (Viet Nam): *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, except that POW's, dependents of MIA's and survivors of those persons who have been continuously in said armed services for a period of five years or more immediately prior to August 5, 1964, shall be eligible to receive compensation under the terms of this chapter: *Provided further*, That persons otherwise eligible who were on active duty for training only, excepting persons who received the Viet Nam Service Medal or Armed Forces Expeditionary Medal (Viet Nam), shall not be eligible to receive compensation under the terms of this chapter: *And 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, or in the event he left no widow eligible for payment hereunder, or children surviving on such date, or parent or parents surviving on such date, then to his surviving grandparent or grandparents: *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. Where a preceding beneficiary fails to file a proper claim for compensation before the final date set by this chapter, succeeding beneficiaries who have filed proper claims before such final date may proceed to qualify upon submission of satisfactory proof of eligibility. Widows, children, or parents of persons missing in action or prisoners of war may file claims for compensation as authorized by this chapter and in the same order as claims for deceased veterans. Any compensation paid to a beneficiary pursuant to this subsection shall be complete settlement and satisfaction of any claim thereafter made on behalf of the person or by the person himself. [1975 1st ex.s. c 273 § 1; 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 account. 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 account, 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. [1975-'76 2nd ex.s. c 123 § 3; 1972 ex.s. c 154 § 4.]

Expiration date—1975-'76 2nd ex.s. c 123: See notes following RCW 43.84.090.

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 account. [1975-'76 2nd ex.s. c 123 § 4; 1972 ex.s. c 154 § 6.]

Expiration date—1975-'76 2nd ex.s. c 123: See notes following RCW 43.84.090.

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. No claim for payment under this chapter shall be subject to garnishment, attachment, levy, or execution. Any violation of this section shall be a gross misdemeanor. [1975 1st ex.s. c 273 § 2; 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 account. [1975-'76 2nd ex.s. c 123 § 5; 1972 ex.s. c 154 § 11.]

Expiration date—1975-'76 2nd ex.s. c 123: See notes following RCW 43.84.090.

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 account. [1975-'76 2nd ex.s. c 123 § 6; 1972 ex.s. c 154 § 12.]

Expiration date—1975-'76 2nd ex.s. c 123: See notes following RCW 43.84.090.

73.34.120 Terminal dates for filing claims—Applications. No certificate or claim for compensation under this chapter shall be accepted after March 28, 1976. No warrant shall be drawn for the payment of any compensation authorized by this chapter unless a formal application has been filed as set forth above.

The state treasurer and his authorized agents shall have until December 31, 1976, to process all applications filed pursuant to this chapter and microfilm all records pertaining thereto. [1975 1st ex.s. c 273 § 3; 1974 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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Identicators—Issuance to nondrivers and public assistance recipients: RCW 46.20.117.

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 nonexempt 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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74.08.550	Homemaker—home health, chore, and personal and household services—Department to develop program.
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—Licensing—Rules and regulations. The department is authorized to promulgate rules and regulations establishing eligibility for alternate living arrangements, and license the same, 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. [1975-'76 2nd ex.s. c 52 § 1; 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.]

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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74.09.030 Responsibility of division of medical care.

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74.09.075 Evaluation of employability when medical condition represented—Medical reports—Medical consultations and assistance.
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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—Regulations—Inspection. 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. The department shall establish regulations for reasonable nursing home accounting and reimbursement systems which recognize relevant cost related factors for department of social and health services patients, including but not limited to the scope or level of services or care, requirements of staff, and physical plant, and a reasonable rate of return on investment; said formula shall provide that no payment shall be made to a nursing home which does not permit inspection by the department of social and health services of every part of its premises and an examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs and

methods of supply, and any other records the department deems relevant to the establishment of such a system.

All other services and supplies provided under the program shall be secured by contract. [1975 1st ex.s. c 213 § 1; 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, incorrigible as defined in RCW 13.04.010(7) 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. [1975-'76 2nd ex.s. c 71 § 3; 1971 ex.s. c 292 § 66; 1965 c 30 § 3.]

Purpose—1975-'76 2nd ex.s. c 71: See annotation following RCW 13.04.095. (Effective July 1, 1977.)

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 children, incorrigible children as defined by RCW 13.04.010(7), 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 including but not limited to contracting with private and public entities to provide basic education and vocational training.

(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 as now or hereafter amended, 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. [1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

Purpose—1975-'76 2nd ex.s. c 71: See annotation following RCW 13.04.095. (Effective July 1, 1977.)

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—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 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 further the purposes set forth in RCW 74.13.100. The secretary 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 purposes.

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 nonfederal 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. [1975 c 53 § 1; 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, constitute 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.]

74.13.145 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

Sections

74.15.010	Declaration of purpose.
74.15.020	Definitions.
74.15.030	Powers and duties of director.
74.15.040	Licenses for foster-family homes—Issuance by department.
74.15.050	Fire protection—Powers and duties of state fire marshal.
74.15.060	Health protection—Powers and duties of secretary of social and health services.
74.15.070	Articles of incorporation and amendments—Copies to be furnished to department.
74.15.080	Access to agencies, records.
74.15.090	Licenses required.
74.15.100	License application, issuance, duration—Reclassification.
74.15.110	Renewal of licenses.
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74.15.140	Action against licensed or unlicensed agencies authorized.
74.15.150	Penalty for operating without license.
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.]

*Reviser's note: "RCW 74.32.040 through 74.32.055" were repealed by 1971 ex.s. c 189 § 7.

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.]

*Reviser's note: "RCW 74.32.040 through 74.32.055", see note following RCW 74.15.010.

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.]

*Reviser's note: "RCW 74.32.040 through 74.32.055", see note following RCW 74.15.010.

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.]

*Reviser's note: "RCW 74.32.040 through 74.32.055", see note following RCW 74.15.010.

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.]

*Reviser's note: "RCW 74.32.040 through 74.32.055", see note following RCW 74.15.010.

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.]

*Reviser's note: "RCW 74.32.040 through 74.32.055", see note following RCW 74.15.010.

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.]

*Reviser's note: "RCW 74.32.040 through 74.32.055", see note following RCW 74.15.010.

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.]

*Reviser's note: "RCW 74.32.040 through 74.32.055", see note following RCW 74.15.010.

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.]

*Reviser's note: "RCW 74.32.040 through 74.32.055", see note following RCW 74.15.010.

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.]

*Reviser's note: "RCW 74.32.040 through 74.32.055", see note following RCW 74.15.010.

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.]

*Reviser's note: "RCW 74.32.040 through 74.32.055", see note following RCW 74.15.010.

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.]

*Reviser's note: *RCW 74.32.040 through 74.32.055", see note following RCW 74.15.010.

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.]

*Reviser's note: "RCW 74.32.040 through 74.32.055", see note following RCW 74.15.010.

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

- 74.16.030 Eligibility.
- 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.
- 74.16.190 Home industries revolving fund.
- 74.16.300 Services provided to help attain self-care.

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.]

Chapter 74.17

BLIND PERSONS—VENDING FACILITIES IN PUBLIC BUILDINGS

Sections

74.17.010	Definitions.
74.17.020	Priority to blind persons.
74.17.030	Business enterprises revolving fund.
74.17.040	Rules and regulations—Existing facilities.

74.17.010 Definitions. The terms defined in this section shall have the indicated meanings when used in this chapter.

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

(2) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty degrees. In determining whether an individual is blind there shall be an examination by a physician skilled in diseases of the eye, or by an optometrist, whichever the individual shall select.

(3) "Licensee" means a blind person licensed by the state of Washington pursuant to federal law, 49 Stat. 1559, as amended, 20 U.S.C. sec. 107, this chapter, and the rules and regulations issued hereunder.

(4) "Public building" means any building owned by the state of Washington or any political subdivision thereof and any space leased by the state of Washington or any political subdivision thereof in any privately owned building and designated by the department as being appropriate for inclusion in the business enterprises program: *Provided, however,* That any vending facility or vending machine under the jurisdiction and control of another established state or local board or authority responsible for its maintenance and operation shall not be designated without the consent and approval of such state or local board or authority.

(5) "Vending facility" means any vending stand, facility, cafeteria, or snack bar at which food, tobacco, or sundries are offered for sale.

(6) "Vending machine" means any coin operated machine offering food, tobacco, or sundries for sale.

(7) "Business enterprises program" is that program operated by the department pursuant to applicable federal law and this chapter in support of blind persons operating vending businesses in public buildings. [1975 1st ex.s. c 251 § 1.]

74.17.020 Priority to blind persons. (1) The department is authorized to license blind persons for the operation of vending facilities and machines on federal property and in public buildings.

(2) The state, political subdivisions thereof, and agencies of the state or political subdivisions thereof shall give priority to licensees in the operation of vending facilities and machines in a public building. [1975 1st ex.s. c 251 § 2.]

74.17.030 Business enterprises revolving fund. (1) There is established in the general fund an account known as "the business enterprises revolving fund".

(2) The net proceeds from any vending machine operation in a public building, other than such an operation managed by a licensee, shall be made payable to the business enterprises revolving fund. "Net proceeds", for purposes of this section, shall mean the gross amount received less the costs of the operation, including a fair minimum return to the operator, which return shall not exceed a reasonable amount to be determined by the department.

(3) All moneys in the business enterprises revolving fund shall be expended only for equipment, services, and payment to licensees in the business enterprises programs. [1975 1st ex.s. c 251 § 3.]

74.17.040 Rules and regulations—Existing facilities. (1) The department shall promulgate rules and regulations necessary to implement this chapter.

(2) This chapter and rules promulgated thereunder shall not apply to any franchise, concession, or contract governing operation of a vending facility in a public building if such franchise, concession, or contract was in existence immediately prior to September 8, 1975. [1975 1st ex.s. c 251 § 4.]

Chapter 74.20

SUPPORT OF DEPENDENT CHILDREN

Sections

74.20.010	Purpose—Chapter to be liberally construed.
74.20.020	Definitions.
74.20.040	Duty of department to enforce child support—Support enforcement services.
74.20.060	Cooperation by person having custody of child—Penalty.
74.20.101	Payment of support moneys collected to support enforcement and collections unit—Notice.
74.20.160	Department may disclose information to internal revenue department.
74.20.210	Attorney general may act under Uniform Reciprocal Enforcement of Support Act pursuant to agreement with prosecuting attorney.
74.20.220	Powers of department through the attorney general.
74.20.230	Petition for support order by married parent with minor or legally adopted children who are receiving public assistance.
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.
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 § 2.]

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

- 74.20A.010 Purpose—Remedies additional.
- 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.
- 74.20A.060 Assertion of lien—Effect.
- 74.20A.070 Service of lien.
- 74.20A.080 Order to withhold and deliver—Issue and service—Contents—Effect—Delivery of property—Bond to release.
- 74.20A.090 Certain amount of earnings exempt from lien or order—"Earnings" and "disposable earnings" defined.
- 74.20A.100 Civil liability upon failure to comply with order or lien.
- 74.20A.110 Release of excess to debtor.
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- 74.20A.130 Distraint, seizure and sale of property subject to liens under RCW 74.20A.060, procedure.
- 74.20A.140 Action for foreclosure of support lien—Satisfaction.
- 74.20A.150 Satisfaction of lien after foreclosure proceedings instituted—Redemption.
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- 74.20A.180 Secretary may make demand, file and serve liens, when payments appear in jeopardy.
- 74.20A.190 Interest on debts due—Waiver.
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- 74.20A.220 Charging off child support debts as uncollectible.

- 74.20A.230 Employee debtor rights protected—Limitation.
- 74.20A.240 Assignment of earnings to be honored—Effect.
- 74.20A.250 Receipt of public assistance for a child as assignment of rights in support obligation—Secretary as attorney for endorsing drafts.
- 74.20A.260 Industrial insurance disability compensation payments subject to lien and order to withhold and deliver.
- 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.
74.22.020	Employables, others, referred to department of employment security.
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.
74.22.090	Good cause for refusal to participate in training or a special work project under program.
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—Travel expenses.

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—Travel expenses. 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 travel expenses as provided for in RCW 43.03.050 and 43.03.060, as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 170; 1969 ex.s. c 203 § 3.]

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

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 74.38

SENIOR CITIZENS SERVICES ACT

Sections

74.38.010	Legislative recognition—Public policy.
74.38.020	Definitions.
74.38.030	Administration of community based services program—Area plans—Annual state plan—Determination of low income eligible persons.
74.38.040	Scope and extent of community based services program—Termination date of chapter.
74.38.050	Availability of services for nonlow income persons—Utilization of volunteers and public assistance recipients—Private agencies—Fee schedule.
74.38.060	Expansion of federal programs authorized.
74.38.900	Short title.
74.38.905	Severability—1975-'76 2nd ex.s. c 131.
74.38.910	Termination date.

74.38.010 Legislative recognition—Public policy.

The legislature recognizes the need for the further development and expansion of alternative forms of care for senior citizens. These alternative forms should be developed to assure that senior citizens receive the level of care needed and that appropriate resources are available to match client needs. Furthermore, services received should be designed to restore individuals to, or maintain them at, the level of independent living they are capable of attaining. Such a system of alternative care should be designed to allow senior citizens to move within this system, thus allowing the appropriate services to be rendered according to the care needs. The provision of service should continue until the client is able to function independently, moves to an institution, moves from the state, dies, or withdraws from the program.

Therefore, the legislature deems it to be the public policy of this state that programs shall be developed in order to more appropriately meet the care needs of senior citizens through the creation and/or expansion of alternative care services and a resulting reduction in institutional care. [1975-'76 2nd ex.s. c 131 § 1.]

74.38.020 Definitions. As used in this chapter, the following words and phrases shall have the following meaning unless the content clearly requires otherwise:

(1) "Area agency" means an agency, other than a state agency, designated by the department to carry out programs or services approved by the department in a designated geographical area of the state.

(2) "Area plan" means the document submitted annually by an area agency to the department for approval which sets forth (a) goals and measurable objectives, (b) review of past expenditures and accounting of revenue for the previous year, (c) estimated revenue and expenditures for the ensuing year, and (d) the planning, coordination, administration, social services, and evaluation activities to be undertaken to carry out the purposes of the Older Americans Act of 1965 (42 U.S.C. Sec. 3024 et. seq.), as now or hereafter amended.

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

(4) "Office" shall mean the office on aging which is the organizational unit within the department responsible for coordinating and administering aging problems.

(5) "Eligible persons" means senior citizens who are:

(a) Sixty years of age or more and are either (i) nonemployed, or (ii) employed for twenty hours per week or less; or

(b) Are sixty-five years or more of age;

(c) In need of services to enable them to remain in their customary homes because of physical, mental, or other debilitating impairments.

(6) "Low income" means initial resources or subsequent income at or below forty percent of the state median income as promulgated by the secretary of the United States department of health, education and welfare for Title XX of the Social Security Act, or, in the alternative, a level determined by the department and approved by the legislature.

(7) "Income" shall have the same meaning as RCW 74.04.005(12), as now or hereafter amended; except, that money received from RCW 74.38.060 shall be excluded from this definition.

(8) "Resource" shall have the same meaning as RCW 74.04.005(11), as now or hereafter amended.

(9) "Need" shall have the same meaning as RCW 74.04.005(13), as now or hereafter amended. [1975-'76 2nd ex.s. c 131 § 2.]

74.38.030 Administration of community based services program—Area plans—Annual state plan—Determination of low income eligible persons. (1) The program of community based services authorized under this chapter shall be administered by the department. Such services may be provided by the department or through purchase of service contracts, vendor payments or direct client grants.

The department shall, under stipend or grant programs provided under RCW 74.38.060, utilize, to the maximum staffing level possible, eligible persons in its administration, supervision, and operation.

(2) The department shall be responsible for planning, coordination, monitoring and evaluation of services provided under this chapter but shall avoid duplication of services.

(3) The department may designate area agencies in cities of not less than twenty thousand population or in regional areas within the state. These agencies shall submit area plans, as required by the department. They shall also submit, in the manner prescribed by the department, such other program or fiscal data as may be required.

(4) The department shall develop an annual state plan pursuant to the Older Americans Act of 1965, as now or hereafter amended. This plan shall include, but not be limited to:

(a) Area agencies' programs and services approved by the department;

(b) Other programs and services authorized by the department; and

(c) Coordination of all programs and services.

(5) The department shall establish rules and regulations for the determination of low income eligible persons. Such determination shall be related to need based on the initial resources and subsequent income of the person entering into a program or service. This determination shall not prevent the eligible person from utilizing a program or service provided by the department or area agency. However, if the determination is that such eligible person is nonlow income, the provision of RCW 74.38.050 shall be applied as of the date of such determination. [1975-'76 2nd ex.s. c 131 § 3.]

74.38.040 Scope and extent of community based services program—Termination date of chapter. The community based services for low income eligible persons provided by the department or the respective area agencies may include:

(1) Access services designed to provide identification of eligible persons, assessment of individual needs, reference to the appropriate service, and follow-up service where required. These services shall include information and referral, outreach, transportation and counseling;

(2) Day care offered on a regular, recurrent basis. General nursing, rehabilitation, personal care, nutritional services, social casework, mental health as provided pursuant to chapter 71.24 RCW and/or limited transportation services may be made available within this program;

(3) Night services offered on a regular, recurrent basis which provide therapeutic programs at other than regular working hours;

(4) In-home care for persons, including basic health care; performance of various household tasks and other necessary chores, or, a combination of these services;

(5) Counseling on death for the terminally ill and care and attendance at the time of death; except, that this is not to include reimbursement for the use of life-sustaining mechanisms;

(6) Health services which will identify health needs and which are designed to avoid institutionalization; assist in securing admission to medical institutions or other health related facilities when required; and, assist in obtaining health services from public or private agencies or providers of health services. These services shall include periodic health screening and evaluation, in-home services, health education, and such health appliances which will further the independence and well-being of the person;

(7) The provision of low cost, nutritionally sound meals in central locations or in the person's home in the instance of incapacity. Also, supportive services may be provided in nutritional education, shopping assistance, diet counseling and other services to sustain the nutritional well-being of these persons;

(8) The provisions of services to maintain a person's home in a state of adequate repair, insofar as is possible, for their safety and comfort. These services shall be limited, but may include housing counseling, minor repair and maintenance, and moving assistance when such repair will not attain standards of health and safety, as determined by the department;

(9) Civil legal services, as limited by RCW 2.50.100, for counseling and representation in the areas of housing, consumer protection, public entitlements, property, and related fields of law.

*Sections 1 through 8 and section 10 of this act shall constitute a new chapter in Title 74 RCW and shall terminate January 1, 1978. [1975-'76 2nd ex.s. c 131 § 4.]

*Reviser's note: Sections 1 through 7 are codified as RCW 74.38-.010-74.38.900; section 8 was vetoed; section 10 is codified as RCW 74.38.905.

74.38.050 Availability of services for nonlow income persons—Utilization of volunteers and public assistance recipients—Private agencies—Fee schedule. The services provided in RCW 74.38.040 may be provided to nonlow income eligible persons: *Provided*, That volunteer workers and public assistant recipients shall be utilized to the maximum extent possible to provide the services provided in RCW 74.38.040: *Provided further*, That when volunteer workers and public assistance recipients are not available, the department shall utilize the bid procedure pursuant to chapter 43.19 RCW for providing such services to low income and nonlow income persons whenever the services to be provided are available through private agencies at a cost savings to the department. The department shall establish a fee schedule based on the ability to pay and graduated to full recovery of the cost of the service provided; except, that nutritional services provided in RCW 74.38.040 shall not be based on need. [1975-'76 2nd ex.s. c 131 § 5.]

74.38.060 Expansion of federal programs authorized. The department may expand the foster grandparent, senior companion and retired senior volunteer programs funded under the Federal Volunteer Agency (ACTION) (P.L. 93-113 Title II), or its successor agency, which provide senior citizens with volunteer stipends, out-of-

pocket expenses, or wages to perform services in the community. [1975-'76 2nd ex.s. c 131 § 6.]

74.38.900 Short title. Sections 1 through 6 of this act shall be known and may be cited as the "Senior Citizens Services Act". [1975-'76 2nd ex.s. c 131 § 7.]

74.38.905 Severability—1975-'76 2nd ex.s. c 131. 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. [1975-'76 2nd ex.s. c 131 § 10.]

74.38.910 Termination date. See last paragraph of RCW 74.38.040.

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.
- 75.44 Loan assistance to commercial fishermen.
- 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 unless the context clearly indicates otherwise. [1975 1st ex.s. c 152 § 2; 1955 c 12 § 75.04.010. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780–100, part.]

Reviser's note: For effective date and expiration date of the amendment to this section by 1975 1st ex.s. c 152 § 2, see RCW 75.44.060.

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.

Loan assistance to commercial fishermen: Chapter 75.44 RCW.

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.]

Frozen food fish or shellfish—Labeling requirements: RCW 69.04.930.

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

Sections

- 75.08.010 Fisheries code.
- 75.08.012 Duties of the department.
- 75.08.014 Authority of director—Qualifications.
- 75.08.020 General duties of director—Patrol vehicles and crafts—Reports and recommendations.
- 75.08.021 May administer oaths.
- 75.08.022 Director may employ assistants—Merit basis.
- 75.08.023 Employees may be bonded.
- 75.08.024 Fisheries patrol officers—Relieved from active duty when injured—Compensation.
- 75.08.025 Agreements with department of defense—Regulation, patrol of defense areas.
- 75.08.027 Cooperation with Oregon for protection, propagation of aquatic products.
- 75.08.030 Installations and facilities—Establishment, maintenance.
- 75.08.040 Lands, water rights, rights of way—Acquisition, use, and management.
- 75.08.050 Oyster reserve—Conservation and development.
- 75.08.054 Oyster seed—Importation and inspection.
- 75.08.056 Oyster seed—Costs of inspection.
- 75.08.060 State shellfish and shrimp lands.

- 75.08.070 Territorial authority of director—Regulations same as fisheries commissions.
- 75.08.080 Rules and regulations—Scope.
- 75.08.090 Rules and regulations—Adoption, promulgation.
- 75.08.100 Rules and regulations—As evidence.
- 75.08.110 Printing of laws, regulations—Approval required.
- 75.08.120 Director may designate fishing areas.
- 75.08.130 Damaging of printed matter and signs prohibited.
- 75.08.140 Brands on fish, etc., from private hatcheries and Indian reservations.
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- 75.08.160 Right of entry—Aircraft operated by department.
- 75.08.170 Inspection and searches without warrant—Seizure of unlawful fish, shellfish.
- 75.08.180 Search warrants—When to be issued.
- 75.08.190 Arrest without warrant—When authorized—Resisting officer.
- 75.08.200 Service, execution of warrants, processes—Assistance.
- 75.08.203 Insurance against actions for false arrest.
- 75.08.206 Peace officer compensation insurance—Medical aid.
- 75.08.210 Failure to make reports and returns.
- 75.08.220 False information and reports.
- 75.08.230 Disposition of moneys collected—Proceeds from sale of food fish or shellfish.
- 75.08.240 Payment of appropriations and claims—Remittances and statements by director.
- 75.08.250 Auditing of expenses—Preparing vouchers.
- 75.08.260 General penalty for violations.
- 75.08.270 Justice and superior courts have concurrent jurisdiction.
- 75.08.275 Duty of attorney general when prosecuting attorney defaults.
- 75.08.280 Venue as to violations occurring in offshore waters.
- 75.08.290 Retaliatory license application provision.

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. For the purpose of conservation, and in a manner consistent therewith, the department shall seek to maintain the economic well-being and stability of the commercial fishing industry in the state of Washington. [1975 1st ex.s. c 183 § 1; 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.]

Reviser's note: For the effective date and expiration date of the amendment to this section by 1975 1st ex.s. c 183 § 1, see RCW 75.28.535.

Program to purchase fishing vessels, gear, licenses and permits: RCW 75.28.500-75.28.540.

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.]

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.]

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 note following RCW 51.08.018.

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

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—Proceeds from sale of food fish or shellfish. 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, 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 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.

Proceeds from the sale of food fish or shellfish taken in test fishing conducted by the department, to the extent that these proceeds may exceed estimates thereof in the budget approved by the legislature, may be allocated by the office of program planning and fiscal management as unanticipated receipts under such procedures as are adopted by the legislature for the allocation of such receipts to reimburse the department for any unanticipated costs for test fishing operations in excess of any allowance therefor in the budget as approved by the legislature.

Proceeds of all sales of salmon and all sales of salmon eggs by the department, to the extent these proceeds may exceed estimates in the budget as approved by the legislature, may be allocated by the office of program planning and fiscal management as unanticipated receipts under such procedures as the legislature may adopt for the allocation of such receipts.

Such allocations shall be made only for the purpose of meeting department obligations in regards to hatchery operations partially or wholly financed by sources other than state general revenues or for purposes of processing human consumable salmon for disposal as may be provided by law. [1975 1st ex.s. c 223 § 1; 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: 1951 c 271 § 2; 1949 c 112 § 25; 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.
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- 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: "date of passage of this act", 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.
- 75.16.020 Planting fish—Consent required.
- 75.16.030 Prevention and suppression of infectious diseases and pests.
- 75.16.040 Destruction of seals, sea lions, and other fish predators.
- 75.16.050 Acceptance of funds or property—Disbursement of funds.
- 75.16.060 Fish stations, laboratories—Agreements with United States, etc.
- 75.16.070 Contracts and agreements as to fish or shellfish propagation.
- 75.16.100 Fish farming—Authorized—Permit—Rules and regulations—"Cultivation" defined—Scope.
- 75.16.110 Fish farming—License—Fee.
- 75.16.120 Fish farming—Salmon eggs for use in fish farming—Charge—Limitation.

Control of traffic along ocean highways for conservation of natural resources: RCW 43.51.680.

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 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—Emergencies.
- 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—Emergencies. 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. The director of fisheries and the director of game shall designate and authorize certain employees of their respective departments to act in place of themselves by signing written approvals for such designations and authorizations. 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. For the purposes of this section, "bed" shall mean that portion of a river or stream and the shorelands within the ordinary high water lines.

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 immediately upon request oral permits to a riparian owner or lessee for removing any obstructions, repairing existing structures, restoring stream banks, or to protect property threatened

by the stream without the necessity of submitting prepared plans and specifications or obtaining a written permit prior to commencing work. Conditions of an oral permit shall be reduced to writing within thirty days and complied with as provided for in this section. [1975 1st ex.s. c 29 § 1; 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.

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 § 60; 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	
75.28.010	License required—Penalty.
75.28.012	Licensing districts—Created.
75.28.013	Licensing districts—Separate licenses required in each district—Fees.
75.28.014	Licensing districts—Application for licenses.
75.28.020	Qualifications for license—Oregon licenses recognized in concurrent waters, conditions.
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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. (Effective until January 1, 1977.) 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.

75.28.081 Personal commercial fishing license. (Effective January 1, 1977.) 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.

A personal commercial fishing license shall be obtained by each and every person who takes or assists in taking Columbia river smelt (*T. pacificus*) under a Columbia river smelt license.

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 or Columbia river smelt. [1975-'76 2nd ex.s. c 40 § 2; 1971 ex.s. c 283 § 14.]

Effective date—1975-'76 2nd ex.s. c 40: See note following RCW 75.28.083.

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.083 Columbia river commercial smelt license—Fee. (Effective January 1, 1977.) A Columbia river smelt license shall be required for the commercial taking of Columbia river smelt (*T. pacificus*). The fee for such license shall be two hundred dollars per annum for residents and nonresidents. The provisions of RCW 75.28.375 shall not apply to this section.

Any vessel holding a Columbia river smelt license may utilize any gear legal for the taking of smelt from the Columbia river and tributaries and shall not be required to obtain separate licenses for the use of such gear.

Applications accompanied by the prescribed fees for the commercial smelt license required herein shall be made in person or postmarked not later than midnight January 10 of the year in which the commercial smelt license is to be issued. [1975-'76 2nd ex.s. c 40 § 1.]

Effective date—1975-'76 2nd ex.s. c 40: "This 1976 amendatory act shall be effective January 1, 1977." [1975-'76 2nd ex.s. c 40 § 4.] This applies to the 1975-'76 2nd ex.s. amendment to RCW 75.28.081 and to RCW 75.28.083 and 75.28.377.

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 incidently 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 12 § 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.

75.28.377 Nonresident applicants and certain wholesale dealer licensees—Surety or property bond or deposit may be required. (Effective January 1, 1977.)

(1) In addition to license fees required to accompany license applications for wholesale dealers licenses, the director may require certain applicants, as specified in this section, to file a surety bond in the amount of two thousand dollars, issued by a surety insurer who meets the requirements of chapter 48.28 RCW in a form acceptable to the director running to the state of Washington, guaranteeing the payment of catch and privilege fees. Such bond shall be required of any applicant from outside the state of Washington and any applicant who has not held a Washington wholesale dealers license for the preceding three years.

(2) In lieu of the surety bond that may be required under subsection (1) of this section, the applicant may file with the director a property bond, or a deposit, consisting of cash or other security acceptable to the department, equal to the amount of the surety bond. The director shall file all such deposits with the state treasurer until such time as they are returned or applied to outstanding fees. [1975-'76 2nd ex.s. c 40 § 3.]

Effective date—1975-'76 2nd ex.s. c 40: See note following RCW 75.28.083.

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 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 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 ex.s. c 184 § 1.]

Severability—1974 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 ex.s. c 184 § 11.]

Expiration date—1974 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 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 ex.s. c 184 § 2.]

Severability—Expiration date—1974 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 ex.s. c 184 § 3.]

Severability—Expiration date—1974 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 ex.s. c 184 § 4.]

Severability—Expiration date—1974 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 ex.s. c 184 § 6.]

Severability—Expiration date—1974 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—Travel expenses. 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 travel expenses pursuant to RCW 43.03.050 and 43.03.060 as now existing or hereafter amended 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. [1975-'76 2nd ex.s. c 34 § 171; 1974 ex.s. c 184 § 7.]

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

Severability—Expiration date——1974 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 ex.s. c 184 § 9.]

Severability—Expiration date——1974 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 ex.s. c 184 § 10.]

Severability—Expiration date——1974 ex.s. c 184: See notes following RCW 75.28.450.

75.28.500 Program to purchase fishing vessels, gear, licenses and permits—Finding and intent. The legislature finds that the protection, welfare, and economic well-being of the commercial fishing industry is important to the people of this state. There presently exists an overabundance of commercial fishing gear in our state waters which causes great pressure on the fishing resources. This results in great economic waste to the

state and prohibits conservation and harvesting programs from achieving their goals. This adverse situation has been compounded by the recent federal court decision, *United States of America et al. v. State of Washington et al.*, Civil No. 9213, United States District Court for the Western District of Washington, February 12, 1974. As a result, large numbers of commercial fishermen face personal economic hardship and the state commercial fishing industry is confronted with economic difficulty. The public welfare requires that the state have the authority to purchase commercial fishing vessels, licenses, gear, and permits offered for sale, as appropriate, in a manner which will provide relief to the individual vessel owner, and which will effect a reduction in the amount of commercial fishing gear in use in the state so as to insure increased economic opportunity for those persons in the industry and to insure that sound scientific conservation and harvesting programs can be carried out. It is the intention of the legislature to provide relief to commercial fishermen adversely affected by the current economic situation in the state fishery and to preserve this valuable state industry and these natural resources. [1975 1st ex.s. c 183 § 2.]

Loan assistance program for commercial fishermen: Chapter 75.44 RCW.

75.28.505 Program to purchase fishing vessels, gear, licenses and permits—Definitions. As used in RCW 75.28.500 through 75.28.540, unless the context indicates otherwise:

(1) "Case area" means those areas of the Western district of Washington within the watersheds of Puget Sound and the Olympic Peninsula north of Grays Harbor and in the adjacent offshore waters which are within the jurisdiction of the state of Washington, as defined in *United States of America et al. v. State of Washington et al.*, Civil No. 9213, United States District Court for Western District of Washington, February 12, 1974, or any area in which fishing rights are affected by court decision in a manner consistent with the above-mentioned decision;

(2) "Department" means the department of fisheries;

(3) "Director" means the director of the department of fisheries. [1975 1st ex.s. c 183 § 3.]

Reviser's note: Throughout RCW 75.28.500–75.28.540, the phrase "this 1975 amendatory act" has been changed to RCW 75.28.500 through 75.28.540. "This 1975 amendatory act" [1975 1st ex.s. c 183] also amends RCW 75.08.012.

75.28.510 Program to purchase fishing vessels, gear, licenses and permits—Authorized. The department is authorized to purchase commercial fishing vessels and appurtenant gear, and the appropriate current commercial fishing licenses and delivery permits issued by the state of Washington if the vessel, licensee or permit holder:

(1) Was licensed to fish or deliver fish during 1974 within the case area; and

(2) Was substantially restricted in its fishing season in 1974 by the department as a result of compliance with *United States of America et al. v. State of Washington*

et al., Civil No. 9213, United States District Court for Western District of Washington, February 12, 1974.

The department shall not purchase any vessel without also purchasing all appropriate current Washington commercial fishing licenses and delivery permits issued to such vessel or its owner: *Provided*, That the department is authorized to purchase current licenses and delivery permits in the absence of the purchase of a vessel. [1975 1st ex.s. c 183 § 4.]

75.28.515 Program to purchase fishing vessels, gear, licenses and permits—Valuation—Maximum price—Retirement of licenses and permits. The purchase by the department of a vessel and appurtenant gear shall be based on a survey conducted by a qualified marine surveyor. A license or delivery permit shall be valued separately by the department.

The director may specify a maximum price to be paid by the department for any vessel, gear, license or delivery permit purchased pursuant to RCW 75.28.510. Any license or delivery permit so purchased shall be permanently retired by the department. [1975 1st ex.s. c 183 § 5.]

75.28.520 Program to purchase fishing vessels, gear, licenses and permits—Disposition of vessels and gear—Prohibition against using purchased vessels for fishing purposes. The department may arrange for the insurance and storage and for the resale or other disposition of all vessels and gear purchased pursuant to RCW 75.28.500 through 75.28.540. Such vessels shall not be used by any owner or operator as a fishing vessel other than as a vessel used for angling or other personal use in waters within the state of Washington, nor shall such vessels be used by any owner or operator to deliver fish within the boundaries of the state of Washington. The department shall require that the purchasers or other users of vessels resold or otherwise disposed of by the department execute any and all suitable instruments to insure compliance with the requirements of this section. The director may commence suit or be sued on any such instrument in any state court of record or United States district court having jurisdiction. [1975 1st ex.s. c 183 § 6.]

Reviser's note: See note following RCW 75.28.505.

75.28.525 Program to purchase fishing vessels, gear, licenses and permits—Violations—Penalties—Forfeiture. Any person violating any of the provisions of RCW 75.28.500 through 75.28.540, or of 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 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 both. Upon conviction of any person of a violation of any provision of RCW 75.28.500 through 75.28.540, or rule or regulation of the

director, the judge or justice of the peace may, in addition to the penalty imposed by law, provide for the forfeiture of the vessel and licenses and/or permits to the state of Washington. [1975 1st ex.s. c 183 § 7.]

Reviser's note: See note following RCW 75.28.505.

75.28.530 Program to purchase fishing vessels, gear, licenses and permits—Administration of program—Advisory board—Travel expenses. The director shall promulgate rules and regulations concerning the operation of such program in accordance with the provisions of chapter 34.04 RCW. The director may enlist the aid of such other state agencies to assist the department in the administration of the provisions of RCW 75.28.500 through 75.28.540. To minimize the impact of this program on other ongoing state activities as well as on current staffing levels, the director shall have the authority to contract with persons or entities not employed by the state to assist in the administration of the provisions of RCW 75.28.500 through 75.28.540.

The director shall appoint an advisory board composed of four individuals who are knowledgeable of the commercial fishing industry to assist the director, including the rendering of advice from time to time concerning the values of licenses and permits which may be purchased pursuant to the provisions of RCW 75.28.510, and to perform such other functions as deemed appropriate by the director. The members of such advisory board shall be reimbursed for travel expenses pursuant to RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for each day or major portion thereof spent in the performance of their duty. [1975-'76 2nd ex.s. c 34 § 172; 1975 1st ex.s. c 183 § 8.]

Reviser's note: See note following RCW 75.28.505.

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

75.28.535 Program to purchase fishing vessels, gear, licenses and permits—Effective date—Expiration—Administration—Vessel, gear, license and permit reduction fund. The provisions of *this 1975 amendatory act shall become effective only upon receipt by the department from the federal government of funds in an amount sufficient to administer such provisions and to accomplish its purposes. If such funds are not received or authorized prior to July 1, 1976, *this 1975 amendatory act shall expire on said date.

The director 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 the provisions of *this 1975 amendatory act. There is created within the state treasury a fund to be known as the "vessel, gear, license, and permit reduction fund", which shall be used for the purchase of vessels, licenses, permits, and fishing gear as provided in *this 1975 amendatory act, and for the administration of the provisions of *this 1975 amendatory act. This fund shall be credited with any federal or other funds received to carry out the purposes of *this 1975 amendatory act and shall also be credited with all

proceeds from the sale or other disposition of any property purchased pursuant to RCW 75.28.510. [1975 1st ex.s. c 183 § 9.]

*Reviser's note: "this 1975 amendatory act" [1975 1st ex.s. c 183] consists of RCW 75.28.500-75.28.540, and amendments to RCW 75.08.012.

75.28.540 Program to purchase fishing vessels, gear, licenses and permits—Time limitation to apply for participation—Completion of program. No application for participation in the program provided for in RCW 75.28.500 through 75.28.540 shall be accepted by the department later than June 30, 1977. The director shall provide for the expeditious completion of the program thereafter and shall notify the state legislature when such provisions might appropriately be declared null and void. [1975 1st ex.s. c 183 § 10.]

Reviser's note: See note following RCW 75.28.505.

**Chapter 75.32
PRIVILEGE AND CATCH FEES ON FOOD FISH
AND SHELLFISH**

Sections

- 75.32.001 "Primary market value" defined.
- 75.32.020 Privilege fees required.
- 75.32.030 Canners, processors, dealers—Privilege fees.
- 75.32.051 Oyster canners, processors, dealers—Privilege fee.
- 75.32.070 Catch fees required—Exception—Privilege, catch, fees when Oregon fees already paid.
- 75.32.080 Payment of catch fees—"Original receiver" defined—Responsibility for privilege taxes.
- 75.32.090 Payment of privilege or catch fees—When due—Returns.
- 75.32.101 Delinquent payments—Penalties—Interest—Lien—Date of filing governed by postmark.
- 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. Cannery, curers, freezers, wholesale dealers and retail dealers of food fish and shellfish, other than oysters, and manufacturers of food fish and shellfish byproducts, 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. Cannery, 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

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| 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 1, 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 75.44 LOAN ASSISTANCE TO COMMERCIAL FISHERMEN

Sections

75.44.010	Legislative finding and intent.
75.44.020	Definitions.
75.44.030	Authority to make loans—Eligibility.
75.44.040	Loan restrictions and limitations.
75.44.050	Administration of program.
75.44.060	Effective date, expiration of chapter.
75.44.070	Authority to accept federal funds—Interest payment loan fund—Investments.
75.44.080	Time limitation to make application.

Program to purchase vessels, gear, licenses and permits: RCW 75.28-.500-75.28.540.

75.44.010 Legislative finding and intent. The legislature finds that the economic health and stability of the commercial fishing industry is of paramount importance to the people of this state. The recent federal court decision, *United States of America et al v. State of Washington et al*, Civil No. 9213, United States District Court for the Western District of Washington, February 12, 1974, together with department of fisheries compliance therewith, have had an adverse impact on this economic health and stability. The public welfare requires that the state have the authority to transmit federal funds in the form of loans to eligible productive commercial fishermen.

Retaining productive commercial fishermen in the state's fishery will enhance productivity by the fishing industry, will improve economic opportunity for those fishermen dependent upon the resource as a source of income, and will contribute to sound conservation and

harvesting programs affecting this important state fishery resource. It is the intention of the legislature to provide assistance to productive commercial fishermen who are adversely affected by the current economic situation in the state's commercial fishery. [1975 1st ex.s. c 152 § 1.]

75.44.020 Definitions. As used in this chapter the terms in this section shall have the meanings indicated unless the context indicates otherwise.

(1) "Case area" shall have the meaning as defined in *United States of America, et al v. State of Washington, et al*, Civil No. 9213, United States District Court for the Western District of Washington, February 12, 1974, which is: "That portion of the State of Washington west of the Cascade Mountains and north of the Columbia River drainage area, and includes the American portion of the Puget Sound watershed, the watersheds of the Olympic Peninsula north of the Grays Harbor watershed, and the offshore waters adjacent to those areas". The director is authorized to modify the definition of "case area" to correspond to any subsequent definition included in a relevant decision of the same court, or in appellate review thereof, or where fishing rights are affected by some other court decision in a manner consistent with the above-mentioned decision.

(2) "Department" means the department of general administration.

(3) "Director" means the director of the department of general administration. [1975 1st ex.s. c 152 § 3.]

75.44.030 Authority to make loans—Eligibility. The department is empowered to make loans which the department determines to be necessary and appropriate to commercial fishermen. To be eligible a commercial fisherman shall:

- (1) Own a commercial fishing vessel;
- (2) Have been licensed to fish or deliver fish in 1974 in the case area;
- (3) Have been adversely affected by a fishing season in 1974 in the case area which was substantially restricted by the department of fisheries as a result of compliance with the federal court decision;
- (4) Be currently licensed to fish or deliver fish;
- (5) Be determined to be a productive commercial fisherman by the department in cooperation with the department of fisheries by an analysis of individual fish catch records for the calendar years 1972, 1973, 1974, and/or 1975; and
- (6) Be determined by the department to have been primarily dependent on commercial fishing for his or her earned income during at least one of the calendar years 1972, 1973, 1974, or 1975. [1975 1st ex.s. c 152 § 4.]

75.44.040 Loan restrictions and limitations. (1) Loans made pursuant to RCW 75.44.030 shall be used only to pay accrued and past due interest payments owing on obligations whose proceeds were used for the construction, reconstruction, or purchase of a commercial fishing vessel and shall not exceed the amount of such interest payments falling due during 1974 and 1975.

(2) No loan assistance provided under this chapter shall be made available to any fisherman who participates or seeks to participate in any aspect of the program administered through funds made available from the "vessel, gear, and permit reduction fund" if such fund is established pursuant to separate legislation.

(3) The provisions of subsections (1) and (2) of this section shall be subject to the following additional restrictions and limitations:

(a) No financial assistance shall be extended pursuant to this chapter unless the financial assistance applied for is not otherwise available on reasonable terms.

(b) No loan under this chapter shall be made if the total amount outstanding and committed to the borrower from the interest payment loan fund established by RCW 75.44.070 would exceed ten thousand dollars or is less than five hundred dollars.

(c) The rate of interest to be charged by the department for any such loan shall be at the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of one percent, plus one-quarter of one percent per annum.

(d) No such loan, including renewals or extensions thereof, may be made for a period or periods exceeding two years.

(e) All loans made pursuant to this chapter shall be of such sound value or so secured as reasonably to assure repayment.

(4) The director may establish priority classes of persons who might first qualify for loans under the provisions of this chapter in order that the purposes and objectives of the chapter shall be accomplished. [1975 1st ex.s. c 152 § 5.]

75.44.050 Administration of program. The director shall promulgate rules and regulations concerning the operation of such program in accordance with the provisions of chapter 34.04 RCW. The director may enlist the aid of such other state agencies to assist the department in the administration of the provisions of this chapter. To minimize the impact of this program on other ongoing state activities as well as on current staffing levels, the director shall have the authority to contract with persons or entities not employed by the state to assist in the administration of the provisions of this chapter. [1975 1st ex.s. c 152 § 6.]

75.44.060 Effective date, expiration of chapter. The provisions of this chapter shall become effective only upon receipt by the department from the federal government of funds in an amount sufficient to administer such provisions and to accomplish the purposes of this chapter. If such funds are not received or authorized prior to January 1, 1976, this chapter shall expire on said date, and shall be null and void and without any further force and effect on such date without any further action by the legislature. [1975 1st ex.s. c 152 § 7.]

75.44.070 Authority to accept federal funds—Interest payment loan fund—Investments. The department is empowered to receive and accept funds from the federal government for the administration of this program as authorized in the provisions of this chapter. There is created within the department a fund to be known as the "interest payment loan fund", which shall be used for the disbursement of loan moneys as provided in this chapter, and for the administration of the provisions of this chapter. This fund shall be credited with any federal funds received to carry out the purposes of this chapter and shall also be credited with all repayments of loans, payments of interest, and other receipts arising out of transactions entered into by the department pursuant to the provisions of this chapter. The director shall have the full power to invest and reinvest such funds in those classes of securities described in the provisions of RCW 43.84.150. [1975 1st ex.s. c 152 § 8.]

75.44.080 Time limitation to make application. No application for participation in the program provided for in this chapter shall be accepted by the department later than December 31, 1976. [1975 1st ex.s. c 152 § 9.]

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 1 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.

Cascara 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

Sections	
76.04.010	Definitions.
76.04.020	General duties of director.
76.04.030	Transfer of powers and duties—Federal funds.
76.04.050	Duties of supervisor—Forest assistants.
76.04.060	Wardens—Appointment—Duties—Compensation.
76.04.070	Further duties of wardens.
76.04.080	Rangers—Appointment—Ex officio rangers—Compensation.
76.04.090	Duty of prosecuting attorney—Magistrate—Penalties.
76.04.100	Service of notices.
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76.04.120	Rules and regulations—Penalty for violations.
76.04.130	Disposition of fines.
76.04.140	Regions of extra fire hazard—Designation—Penalty.
76.04.150	Closed season—Permits.
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76.04.180	Supervised burning—Fire fighting—Employment—Penalty for refusing assistance.
76.04.190	Closure of forest operation—Penalty.
76.04.200	Suspension of burning permits and hunting privileges.
76.04.210	Penalties for setting fires or removing notices.
76.04.220	Wilful or negligent fires—Fire fighting—Refusal to aid—Penalty.
76.04.222	Snags must be felled currently with logging.
76.04.223	Size of snags—Number to be felled in snag areas.
76.04.224	Number of snags to be felled—Same ratio as green timber cut.
76.04.225	Snag removal pattern.
76.04.226	Snag removal—Penalty for failure to remove—Lien.
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76.04.240	Burning mill wood waste—Arresters.
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76.04.251	Steam, internal combustion or electric engines and other spark emitting equipment regulated.
76.04.252	Closed season.
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76.04.275	Power driven machinery—Permits.
76.04.277	Power driven machinery—Penalty.
76.04.280	Deposit of fire or live coals.
76.04.290	Reports of fires by carriers.
76.04.300	Lighted cigars, etc.—Receptacles in conveyances—Penalty.
76.04.310	Disposal of forest debris—Permission to allow trees to fall on another's land.
76.04.340	Destruction of forests—Penalty.
76.04.350	Owners to protect forests.
76.04.360	Fire patrol assessments—Lien—Supervisor's bond (as amended by 1973 1st ex.s. c 182 § 1).
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.
 76.04.385 Reimbursement for costs of suppression action.
 76.04.390 Negligent starting of fires—Permitting existence of extreme fire hazard or forest debris—Liability for costs—Recovery.
 76.04.395 Permitting spread of fire—Penalty.
 76.04.397 Cutting or destroying trees without authority—Penalty.
 76.04.400 Cooperative protection.
 76.04.410 Contracts for protection and development.
 76.04.420 Corporations may contract with state.
 76.04.430 Articles of incorporation—Requirements.
 76.04.440 Requisites of contracts.
 76.04.450 Olympic peninsula area protection.
 76.04.460 Olympic peninsula area protection—Rules and regulations.
 76.04.470 Olympic peninsula area protection—Publication of rules.
 76.04.480 Olympic peninsula area protection—Penalty for violation of rules.
 76.04.485 Olympic peninsula area protection—Appointment of agents and employees.
 76.04.490 Clarke-McNary fund.
 76.04.500 Cooperative farm forestry funds.
 76.04.510 General contingency forest fire suppression account.
 76.04.515 Landowner contingency forest fire suppression account.
 76.04.520 Forest fire advisory board.

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.

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 38 §§ 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:** "this act", see note following RCW 76.04.370.

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

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 landowner's 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.

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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.
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- 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

Sections

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76.09.910	Shoreline management act, hydraulics act, other statutes and ordinances not modified—Exceptions.
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76.09.925	Effective dates—1974 ex.s. c 137.
76.09.930	Legislative directive.
76.09.935	Severability—1974 ex.s. c 137.

Chapter 76.09 RCW to be used to satisfy federal water pollution act requirements: RCW 90.48.425.

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 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 ex.s. c 137 § 2.]

76.09.030 Forest practices board—Created—Membership—Terms—Vacancies—Meetings—Compensation, travel 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) Six members of the general public appointed by the governor, one of whom shall be an owner of not more than five hundred acres of forest land, and one of whom shall be an independent logging contractor.

(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, the terms of two members shall expire December 31, 1978, and the terms of two members shall expire December 31, 1979. 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 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 travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060 as now existing 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. [1975-'76 2nd ex.s. c 34 § 173; 1975 1st ex.s. c 200 § 1; 1974 ex.s. c 137 § 3.]

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

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 ex.s. c 137 § 4.]

76.09.050 Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—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 have no direct potential for damaging a public resource that may be conducted without submitting an application or a notification;

Class II: Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an application and may begin five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as prescribed by the department, is received by the department. Class II shall not include forest practices:

(a) On lands platted after January 1, 1960, or being converted to another use;

(b) Which require approvals under the provisions of the hydraulics act, RCW 75.20.100;

(c) Within "shorelines of the state" as defined in RCW 90.58.030; or

(d) Excluded from Class II by the board;

Class III: Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within fourteen calendar days from the date the department receives the application;

Class IV: Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, (b) on lands being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, and/or (d) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: *Provided*, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period.

Forest practices under Classes I, II, and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.

(2) No Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended: *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 regulate forest practices and 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) If a notification or application is delivered in person to the department by the operator or his agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.

(4) Forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or the forest practices regulations, and the terms and conditions of any approved applications.

(5) 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. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: *Provided*, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: *Provided, further*, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days: *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 notification or 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.

(6) 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 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.

(7) 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 fourteen business days from the time of transmittal of the application 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 related to subparagraphs (b) (i) and (ii) of this subsection are based on local authority consistent with RCW 76.09.240 as now or hereafter amended, 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.

(8) 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.

(9) 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.

(10) The department shall, within four business days notify the county of all notifications, approvals, and disapprovals of an application affecting lands within the county, except to the extent the county has waived its right to such notice.

(11) 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. [1975 1st ex.s. c 200 § 2; 1974 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 notification and application. The forest practices regulations shall specify by whom and under what conditions the notification and application shall be signed. The application or notification 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 major 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 or other measures necessary to afford protection to public resources; and
- (j) An affirmation that the statements contained in the notification or application are true.

(2) At the option of the applicant, the application or notification 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.

(3) 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 as now or hereafter amended;
- (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 now or hereafter amended 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.

(c) The application shall be either signed by the land owner or accompanied by a statement signed by the land owner indicating his intent with respect to conversion and acknowledging that he is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6) The notification to or 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 or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed.

(7) Notwithstanding any other provision of this section, no prior application or notification 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 or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice. [1975 1st ex.s. c 200 § 3; 1974 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 twelve 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. The forest practices regulations may identify classifications and/or areas of forest land that have the likelihood of future conversion to urban development within a ten year period. The reforestation requirements may be modified or eliminated on such lands: *Provided*, That such identification and/or such conversion to urban development must be consistent with any local or regional land use plans or ordinances. [1975 1st ex.s. c 200 § 4; 1974 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 from any violation, unauthorized deviation, or wilful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence; 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. [1975 1st ex.s. c 200 § 5; 1974 ex.s. c 137 § 8.]

76.09.090 Notice of failure to comply—Contents—Procedures—Appeals—Hearing—Final order—Limitations on actions. 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 or land owner 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 or land owner 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 any violation, unauthorized deviation, or wilful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence.

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: *Provided*, That no direct appeal to the appeals board will be allowed from such final order. 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.

No person shall be under any obligation under this section to prevent, correct, or compensate for any damage to public resources which occurs more than one year after the date of completion of the forest practices operations involved exclusive of reforestation, unless such forest practices were not conducted in accordance with forest practices rules and regulations: *Provided*, That this provision shall not relieve the forest land owner from any obligation to comply with forest practices rules and regulations pertaining to providing continuing road maintenance. No action to recover damages shall be taken under this section more than two years after the date the damage involved occurs. [1975 1st ex.s. c 200 § 6; 1974 ex.s. c 137 § 9.]

76.09.100 Failure to comply with water quality protection—Department of ecology authorized to petition appeals board—Action on petition. 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 within twenty-four hours under RCW 76.09.080, 76.09.090, 76.09.120, or 76.09.130, the department of ecology may petition to the chairman of the appeals board, who shall, within forty-eight hours, either deny the petition or direct the department of natural resources to immediately issue a stop work order or notice to comply, or to impose a penalty. 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. [1975 1st ex.s. c 200 § 7; 1974 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 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 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 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) 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, the forest land owner, timber owner or operator to enforce the forest practice regulations or any final order of the department, or the appeals 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: *And provided further*, That such actions shall not be commenced unless the department fails to take appropriate action after ten days written notice to the department by the county of a violation of the forest practices regulations or final orders of the department or the appeals board. [1975 1st ex.s. c 200 § 8; 1974 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 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 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 as now or hereafter amended or of the forest practices regulations shall be subject to a penalty in an amount of not more than five hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense. In case of a failure to comply with a notice pursuant to RCW 76.09.090 as now or hereafter amended or a stop work order, 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 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 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 deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department of natural resources shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such regulations as it may deem proper.

Any person incurring any penalty hereunder may appeal the same to the forest practices appeals 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. 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 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 within thirty days after it becomes due and payable, the attorney general, upon the request of the department, 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. [1975 1st ex.s. c 200 § 9; 1974 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 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 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 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 ex.s. c 137 § 21.]

76.09.220 Forest practices appeals board—Compensation—Travel 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 expenses incurred in the discharge of his duties in accordance with the provisions of RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(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.

(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. [1975-'76 2nd ex.s. c 34 § 174; 1975 1st ex.s. c 200 § 10; 1974 ex.s. c 137 § 22.]

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

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 ex.s. c 137 § 23.]

76.09.240 Restrictions upon local political subdivisions or regional entities—Exceptions and limitations. 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 as now or hereafter amended 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: *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", except that in relation to "shorelines" as defined in RCW 90.58.030, the following shall apply:

(a) The forest practice regulations adopted pursuant to this chapter shall be the sole rules applicable to the performance of forest practices, and enforcement thereof shall be solely as provided in chapter 76.09 RCW;

(b) As to that road construction which constitutes a substantial development, no permit shall be required under chapter 90.58 RCW for the construction of up to five hundred feet of one and only one road or segment of a road provided such road does not enter the shoreline more than once. Such exemption from said permit requirements shall be limited to a single road or road segment for each forest practice and such road construction shall be subject to the requirements of chapter 76.09 RCW and regulations adopted pursuant thereto and to the prohibitions or restrictions of any master program in effect under the provisions of chapter 90.58 RCW. Nothing in this subsection shall add to or diminish the authority of the shoreline management act

regarding road construction except as specifically provided herein. The provisions of this subsection shall not relate to any road which crosses over or through a stream, lake, or other water body subject to chapter 90.58 RCW;

(c) Nothing in this section shall create, add to, or diminish the authority of local government to prohibit or restrict forest practices within the shorelines through master programs adopted and approved pursuant to chapter 90.58 RCW except as provided in (a) and (b) above.

Any powers granted by chapter 90.58 RCW pertaining to forest practices, as amended herein, are expressly limited to lands located within "shorelines of the state" as defined in RCW 90.58.030. [1975 1st ex.s. c 200 § 11; 1974 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 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 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 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 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 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 ex.s. c 137 § 31.]

76.09.910 Shoreline management act, hydraulics act, other statutes and ordinances not modified—Exceptions. Nothing in RCW 76.09.010 through 76.09.280 as now or hereafter amended shall modify any requirements to comply with the Shoreline Management Act of 1971 except as limited by RCW 76.09.240 as now or hereafter amended, or 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 as now or hereafter amended. [1975 1st ex.s. c 200 § 12; 1974 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 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 ex.s. c 137 § 35.]

76.09.925 Effective dates—1974 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 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 ex.s. c 137 § 33.]

76.09.935 Severability—1974 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 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.
- 76.12.040 Gifts of county or city land for offices, warehouses, etc.
- 76.12.045 Gifts of county or city land for offices, warehouses, etc.—Use of lands authorized.
- 76.12.050 Exchange of lands to consolidate, block up holdings or obtain lands having commercial recreational leasing potential.
- 76.12.060 Exchange of lands to consolidate and block up holdings—Agreements and deeds by commissioner.
- 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.
- 76.12.070 Reconveyance to county in certain cases.

- 76.12.072 Transfer of state forest lands back to county for public park use—Procedure—Reconveyance back when use ceases.
- 76.12.073 Transfer of state forest lands back to county for public park use—Timber resource management.
- 76.12.074 Transfer of state forest lands back to county for public park use—Lands transferred by deed.
- 76.12.075 Transfer of state forest lands back to county for public park use—Provisions cumulative and nonexclusive.
- 76.12.080 Acquisition of forest land—Requisites.
- 76.12.085 Validation of prior land transfers—Certain lands declared state forest lands.
- 76.12.090 Utility bonds.
- 76.12.100 Bonds—Purchase price of land limited—Retirement of bonds.
- 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.
76.14.020	Yacolt burn designated high hazard area—Rehabilitation required.
76.14.030	Administration.
76.14.040	Duties of supervisor.
76.14.050	Firebreaks—Powers of board and supervisor—Grazing lands.
76.14.051	Firebreaks—Preexisting agreements not altered.
76.14.060	Powers and duties of supervisor—Private lands.
76.14.070	Powers and duties of supervisor—Expenditure of public funds.
76.14.080	Fire protection projects—Assessments—Payment.
76.14.090	Fire protection projects—Notice—Hearing.
76.14.100	Fire protection projects—Collection of assessments.
76.14.110	Fire protection projects—Credit on assessment for private expenditure.
76.14.120	Landowner's responsibility under other laws.
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 the area described in RCW 76.14.020 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 described in RCW 76.14.020 for any purpose deemed necessary for access for forest protection, reforestation, development and utilization, and for access to state owned lands within the area described in RCW 76.14.020 for all other purposes, and the supervisor shall have authority to regulate the use thereof. 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. [1975 1st ex.s. c 101 § 1; 1955 c 171 § 2; 1953 c 74 § 5.]

76.14.051 Firebreaks—Preexisting agreements not altered. Nothing in the provisions of RCW 76.14.050 as now or hereafter amended shall be construed to otherwise alter the terms of any existing agreements heretofore entered into by the state and private parties under the authority of RCW 76.14.050 as now or hereafter amended. [1975 1st ex.s. c 101 § 2.]

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 1/16 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 north-west 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.]

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	License to remove firewood authorized.
76.20.020	Removal only for personal use.
76.20.030	Issuance of license—Fee—Limit on amount removed.
76.20.035	Removal of firewood without charge—Authorization.
76.20.040	Penalty.

76.20.010 License to remove firewood authorized. The department of natural resources may issue licenses to residents of this state to enter upon lands under the administration or jurisdiction of the department of natural resources for the purpose of removing therefrom, standing or downed timber which is unfit for any purpose except to be used as firewood. [1975 c 10 § 1; 1945 c 97 § 1; Rem. Supp. 1945 § 7797-40a.]

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 department of natural resources, and if deemed proper, the license may be issued upon the payment of two dollars and fifty cents which shall be paid into the treasury

of the state by the officer collecting the same and placed in the resource management cost account; the license shall be dated as of the date of issuance and authorize the holder thereof to remove between the dates so specified not more than six 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 department of natural resources may prescribe. [1975 c 10 § 2; 1945 c 97 § 3; Rem. Supp. 1945 § 7797-40c.]

76.20.035 Removal of firewood without charge—Authorization. Whenever the department of natural resources determines that it is in the best interest of the state and there will be a benefit to the lands involved or a state program affecting such lands it may designate specific areas and authorize the general public to enter upon lands under its jurisdiction for the purposes of cutting and removing standing or downed timber for use as firewood for the personal use of the person so cutting and removing without a charge under such terms and conditions as it may require. [1975 c 10 § 3.]

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

inclosed 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

Sections

- 76.40.010 Definitions.
76.40.012 Enforcement of chapter.

- 76.40.013 Rules and regulations—Penalty for violation.
76.40.015 Log patrol revolving fund.
76.40.016 Finance—First operations.
76.40.020 Compliance with chapter required.
76.40.030 Log patrol license—Bond—Equipment stickers or devices—Fees.
76.40.040 Identifying equipment device to be displayed.
76.40.050 Duties of log patrol, boom company, or other agency, on recovery of stray logs—Compensation.
76.40.060 Presumption as to branded logs.
76.40.070 Recovery of boom sticks and chains—Compensation—Notice to owner—Sale.
76.40.080 Presumption arising from possession.
76.40.090 Notice to patrol not to take possession.
76.40.100 Conversion of boom sticks or chains.
76.40.110 Unlawful to acquire or process certain logs.
76.40.120 Record to be kept.
76.40.122 Investigations—Hearings—Subpoenas—Oaths.
76.40.124 Violations by applicant or licensee—Hearing—Notice.
76.40.125 Violations by licensee—Remedy of owner—Procedure.
76.40.127 Denial, revocation, suspension of license.
76.40.128 Denial, revocation, suspension of license—Reparation as condition to issuance or reinstatement.
76.40.130 Penalties—Criminal—Civil actions.
76.40.900 Severability—1947 c 116.
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 "permitter") 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.*
- Control of predatory birds injurious to agriculture: RCW 15.04.110–15.04.120.*
- Coyote getters—Use in control of coyotes: RCW 9.41.185.*
- Hood Canal bridge, public sport fishing from: RCW 47.56.366.*
- Interagency committee for outdoor recreation, director member of: RCW 43.99.110.*
- Limitation on liability of landowner for injuries to hunters and fishermen: RCW 4.24.210.*
- Material removed for channel or harbor improvement, or flood control—Use for public purpose: RCW 79.01.178.*
- Youth development and conservation committee, department's representative as member: RCW 43.51.520.*

Chapter 77.04 DEPARTMENT OF GAME

Sections

- 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.
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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, travel expenses—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 official duties and travel expenses in connection therewith in going to, attending, and returning from meetings of the commission in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

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. [1975-'76 2nd ex.s. c 34 § 175; 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.]

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

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

Sections

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 Varden 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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77.12.010 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 of the commission, may entirely close, or shorten any season 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, reopen it, and 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 promulgated in accordance with chapter 34.04 RCW. [1975 1st ex.s. c 102 § 1; 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. [1975 1st ex.s. c 102 § 2; 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).

77.12.173 Penalty assessments upon fines and forfeitures—Deposit in state game fund. On and after June 12, 1975, there shall be levied a penalty assessment in an amount of five dollars for every twenty dollars or fraction thereof, imposed and collected by any court as a fine or forfeiture of bail for any violation of a provision of Title 77 RCW or of any rule, regulation, or order adopted pursuant thereto. Penalties so assessed shall be used by the department of game for the purposes set forth in RCW 77.12.010. Where multiple violations are involved, the penalty assessment shall be based upon the total fine or bail forfeited for all included offenses. When a fine is suspended, in whole or in part, the penalty assessment shall be reduced in proportion to the suspension, except that the penalty assessment shall never be reduced to less than a total of five dollars.

If bail is forfeited, the court shall collect the appropriate amount of the penalty assessment from the person forfeiting such bail and the total amount of such assessment shall be remitted within fifteen days after the end of each quarter to the department of game and deposited in the state game fund.

After a determination by the court of the amount of fine and assessment, the court shall collect and remit within fifteen days after the end of each quarter to the department of game the total amount of such assessment for deposit in the state game fund. [1975 c 57 § 1.]

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 certain vehicles and campers 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. [1975 c 59 § 7; 1973 1st ex.s. c 200 § 1.]

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—Deposit in special wildlife account. 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 or the department 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: *Provided*, That all compensation received heretofore or hereafter for fish and wildlife losses shall be deposited in the special wildlife account of the state game fund established in RCW 77.12.323. Any other moneys, when received by the commission or the department, shall currently be delivered to the state treasurer for deposit in the state game fund. [1975 1st ex.s. c 207 § 1; 1974 ex.s. c 67 § 1; 1955 c 36 § 77.12-320. Prior: 1947 c 275 § 37; Rem. Supp. 1947 § 5992-47.]

77.12.323 Game special wildlife account—Created—Uses—Investments. (1) There is established in the state game fund an account to be known as the game special wildlife account. All moneys received pursuant to RCW 77.12.320 as now or hereafter amended as compensation for fish and wildlife losses shall be deposited in the game special wildlife account of the state game fund and shall be used only for purposes in support of RCW 77.12.010, 77.12.030, and 77.12.175.

(2) The commission may advise the state treasurer and the state finance committee of any surplus in the game special wildlife account above the current needs in support of game and wildlife. The state finance committee may invest and reinvest such surplus of said account as the commission or department deems appropriate, except as otherwise prohibited by law, in an investment authorized by RCW 43.84.150, or in securities issued by the United States government as defined by RCW 43.84.080 (1) and (4), and all income received from

such investments shall be deposited to the credit of the game special wildlife account in the state game fund. [1975 1st ex.s. c 207 § 2.]

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 licensees 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

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*Alien's license to carry firearms: RCW 9.41.170.
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.]

Revocation of hunting license for violation of RCW 77.16.020 or 77.16.030—Appeal: RCW 77.32.290.

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.]

Revocation of hunting license for violation of RCW 77.16.020 or 77.16.030—Appeal: RCW 77.32.290.

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.]

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 two dollars on and after July 1, 1975, 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. [1975 1st ex.s. c 15 § 1; 1963 c 177 § 10.]

*Reviser's note: "RCW 77.32.190" expired December 31, 1975, see RCW 77.32.191 for later enactment.

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

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77.28.110	Access to game farmers' premises.
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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-one dollars for the first year and twenty-one dollars for each yearly renewal thereafter. All such licenses shall expire on December 31st annually and application for renewal shall be made prior thereto. [1975 1st ex.s. c 15 § 2; 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 five dollars on and after July 1, 1975, 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 eleven dollars on and after July 1, 1975, 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 eleven dollars on and after July 1, 1975, 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 eleven dollars on and after July 1, 1975, 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 until December 31, 1975, and three dollars thereafter 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 until December 31, 1975, and three dollars thereafter 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 forty-two dollars on and after July 1, 1975, 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 forty-two dollars on and after July 1, 1975, 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 forty-two dollars on and after July 1, 1975, 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 three dollars on and after July 1, 1975.

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 six dollars on and after July 1, 1975.

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. [1975 1st ex.s. c 15 § 3; 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.

77.32.032 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 three 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. [1975 1st ex.s. c 15 § 19.]

Effective dates—1975 1st ex.s. c 15: "Section 19 of this 1975 amendatory act shall be effective April 1, 1976. Sections 20 through 32 of this 1975 amendatory act shall be effective January 1, 1976." [1975 1st ex.s. c 15 § 34.] This applies to RCW 77.32.032, 77.32.101, 77.32.104, 77.32.106, 77.32.111, 77.32.114, 77.32.131, 77.32.151, 77.32.161, 77.32.191, 77.32.201, 77.32.211, 77.32.226, and 77.32.256.

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.]

77.32.101 Resident state hunting and fishing license. Any resident may by paying the sum of fourteen 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. [1975 1st ex.s. c 15 § 20.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.104 Resident state hunting license. Any resident may by paying the sum of seven 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. [1975 1st ex.s. c 15 § 21.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.106 Resident state fishing license. Any resident may by paying the sum of eight 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. [1975 1st ex.s. c 15 § 22.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.111 Resident county hunting and fishing license. Any resident may by paying the sum of nine 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. [1975 1st ex.s. c 15 § 23.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 75.32.032.

77.32.114 Resident county fishing license. Any resident may by paying the sum of seven 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. [1975 1st ex.s. c 15 § 24.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

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.]

77.32.131 Nonresident state hunting license. Any nonresident or alien may by paying the sum of sixty 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. [1975 1st ex.s. c 15 § 25.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.151 Nonresident state fishing license. Any nonresident or alien may by paying the sum of twenty-four 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. [1975 1st ex.s. c 15 § 26.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.161 Transient's limited state fishing license. Any nonresident or alien who is temporarily sojourning in the state may by paying the sum of seven dollars and twenty-five cents 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. [1975 1st ex.s. c 15 § 27.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

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.]

77.32.191 Trapper's license. Any resident may by paying the sum of eleven 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. [1975 1st ex.s. c 15 § 28.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.195 Nonresident's or alien's trapper's license. Any nonresident or alien may by paying the sum of fifty 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. [1975 1st ex.s. c 15 § 14.]

77.32.201 Taxidermist's license. Any person may by paying the sum of eleven 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. [1975 1st ex.s. c 15 § 29.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.211 Fur dealer's license. Any person may, by paying the sum of eleven 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. [1975 1st ex.s. c 15 § 30.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

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.]

77.32.226 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-six 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. [1975 1st ex.s. c 15 § 31.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

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.]

77.32.256 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 two dollars. [1975 1st ex.s. c 15 § 32.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

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.]

77.32.290 Revocation of hunting license for violation of RCW 77.16.020 or 77.16.030—Appeal. In addition

to any other penalties provided by law, the director shall revoke the hunting license of any person who is convicted of violating RCW 77.16.020 or 77.16.030 relating to elk, moose, cougar, antelope, mountain goat, mountain sheep, caribou, bear or deer. Forfeiture of bail on two occasions during any five-year period for violations of RCW 77.16.020 or 77.16.030 shall constitute the basis for a revocation under this section.

No hunting license shall thereafter be reissued to such person for a period of two years from the date of revocation unless the commission, after a hearing held at one of its regular meetings, authorizes the issuance of such license.

Any person who has had his license revoked or has been denied reissuance pursuant to this section may appeal such decision as provided in chapter 34.04 RCW. [1975 1st ex.s. c 6 § 1.]

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.
- 78.52 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.

Geological survey: RCW 43.27A.130, chapter 43.92 RCW.

Geology supervisor: RCW 43.21.040–43.21.050 and 43.27A.130.

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.

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.

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.
78.12.020	Complaint—Contents.
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 nongaseous, 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 tibble building and trestle thereto, unless same shall be built of fireproof material, and no fires shall be allowed in or about said tibble 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 possession [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 employes 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 washroom, 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 hereinafter 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 reinsulated 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. In by 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.

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, escapement 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 employe: 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 bimonthly 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

Sections

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78.44.910	Previously mined land.
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 78.52 OIL AND GAS CONSERVATION

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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 underlaid 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 bearing—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

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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 4.92 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 (Amendments 55 and 59).

Marine recreation land act: Chapter 43.99 RCW.

Mines, minerals and oils: Title 78 RCW.

Nuisances, generally: Chapter 7.48 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).

Pest districts may include public lands: Chapter 17.12 RCW.

Public contracts and indebtedness: Title 39 RCW.

Public documents, records and publications: Title 40 RCW.

Public institutions: Title 72 RCW.

Public lands, authority of United States over certain areas: State Constitution Art. 25 § 1.
Public shooting grounds: Chapter 77.40 RCW.
Public waterways may include public lands: Chapter 91.08 RCW.
Real property and conveyances: Title 64 RCW.
Reclamation, conservation, land settlement: Title 89 RCW.
Reclamation by state: Chapter 89.16 RCW.
Reclamation districts, right of way across state land: RCW 89.30.223.
Reclamation districts may include public lands: RCW 89.30.016.
Recording, registration and legal publication: Title 65 RCW.
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.
School and granted lands, limitations on sales: State Constitution Art. 16 § 3.
School and granted lands, manner and terms of sale: State Constitution Art. 16 § 2.
Seat of government: State Constitution Art. 14.
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.
Tidelands, disclaimer of certain lands by state: State Constitution Art. 17 § 2.
Toll logging roads: Chapter 76.24 RCW.
Trespass: Chapter 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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- 79.01.736 Duty of attorney general—Commissioner may represent state.
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- 79.01.756 Removal of timber, manufacture into articles—Treble damages.
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- 79.01.770 School districts, institutions of higher education, purchase of leased lands with improvements by—Authorized—Exception—Time limitation—Price.
- 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.
- 79.01.778 School districts, institutions of higher education, purchase of leased lands with improvements by—Extension of contract period, when—Limitation.
- 79.01.780 Determination if lands purchased or leased by school districts or institutions of higher education are used as school sites—Reversion, when.
- 79.01.900 Construction—1927 c 255.

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 capitol 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 appraisal 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 Appraisal, 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 appraisal, 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 appraisal 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. The initial deposits required in RCW 79.01.204,

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. The purchaser shall notify the department of natural resources before any timber is cut and before removal or processing of any valuable materials on the sale area, at which time the department of natural resources may require, in the amount determined by the department, advance payment for the removal, processing, and/or cutting of timber or other valuable materials, or payment bonds or assignments of savings accounts acceptable to the department as adequate security. The amount of such advance payments and/or security shall at all times equal or exceed the value of timber cut and other valuable materials processed or removed until paid for. The initial deposit shall be maintained until all contract obligations of the purchaser are satisfied: *Provided however*, That all or a portion of said initial deposit may be applied as the final payment for said materials in the event the department of natural resources determines that adequate security exists for the performance or fulfillment of any remaining obligations of the purchaser under the sale contract.

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 department of natural resources, the purchaser is acting in good faith and endeavoring to remove such materials, the department of natural resources 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 department of natural resources, 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 department of natural resources 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. [1975 1st ex.s. c 52 § 1; 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 nonmerchantable 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 ten 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. [1975 1st ex.s. c 45 § 1; 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—Appraisalment. 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 appraisalment 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 appraisalment 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, 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

appraisement appealed from, and the clerk of the court shall file a certified copy thereof in the office of the commissioner of public lands. The appraisement 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 appraisement 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 reappraisement—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 appraisement 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 ex.s. c 186 § 1; 1971 ex.s. c 217 § 2.]

*Reviser's note: "section 2 of this 1974 amendatory act" [1974 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 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 wharfs, 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—Appraisalment 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.

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.]

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, prisons, 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 RCW.

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 tide-lands 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 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

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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.

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.

79.08.015 Exchange of land under control of department of natural resources—Public notice—News release—Hearing—Procedure. At least ten days but not more than twenty-five days before the department of natural resources presents a proposed exchange to the board of natural resources involving an exchange of any lands under the administrative control of the department of natural resources, the department shall hold a public hearing on the proposal in the county where the state land or the greatest proportion thereof is located. Ten days but not more than twenty-five days prior to such hearing, the department shall publish a paid public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the state owned land is located. A news release pertaining to the hearing shall be disseminated among printed and electronic media in the area where the state land is located. The public notice and news release also shall identify lands involved in the proposed exchange and describe the purposes of the exchange and proposed use of the lands involved. A summary of the testimony presented at the hearings shall be prepared for the board's consideration when reviewing the department's exchange proposal. If there is a failure to substantially comply with the procedures set forth in this section, then the exchange agreement shall be subject to being declared invalid by a court. Any such suit must be brought within one year from the date of the exchange agreement. [1975 1st ex.s. c 107 § 2.]

Exchange of state land by parks and recreation commission, procedure: RCW 43.51.215.

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 of section 23, the southeast quarter, 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 state 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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- 79.14.070 Royalties.
- 79.14.080 Leases of land within a geologic structure.
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- 79.14.100 Cooperative or unit plans—Communization or drilling agreements.
- 79.14.110 Customary provisions in leases.
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- 79.14.130 Wells to be located minimum distance from boundaries—Exception.
- 79.14.140 Rights of way over public lands—Payment for timber.
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- 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 redrilling 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—Communication 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 communication 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 productiveness 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 non-performance 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

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- 79.16.580 Sale of rock, gravel, sand and silt—Application—Terms of lease or contract—Bond—Payment—Reports.
- 79.16.590 Sale of rock, gravel, sand and silt—Investigation, audit of books of person removing.

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 non-payment 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.]

**Chapter 79.24
CAPITOL BUILDING LANDS**

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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.]

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—Appraisalment—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: Chapter 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.]

*Reviser's note: "budget director" changed to "director of program planning and fiscal management". See RCW 43.88.025, chapter 43.41 RCW.

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.
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79.48.120	Notice that land is open to settlement.
79.48.130	Application for entry—Certificate of location—Minimum price.
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- 79.48.150 Contract of purchase—Payments—Cultivation requirements—Final proof—Patent.
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- 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 sealife 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	Purpose.
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

79.76.010	Legislative declaration.
79.76.020	Short title.
79.76.030	Definitions.
79.76.040	Geothermal resources deemed sui generis.
79.76.050	Administration of chapter.
79.76.060	Scope of chapter.
79.76.070	Drilling permits—Applications—Hearing—Fees.
79.76.080	Drilling permits—Criteria for granting.
79.76.090	Casing requirements.

79.76.100	Plugging and abandonment of wells—Transfer of jurisdiction to department of ecology.
79.76.110	Suspension of drilling, shut-in or removal of equipment for authorized period—Unlawful abandonment.
79.76.120	Notification of abandonment or suspension of operations—Required—Procedure.
79.76.130	Performance bond or other security—Required.
79.76.140	Termination or cancellation of bond or change in other security, when.
79.76.150	Notification of sale, exchange, etc.
79.76.160	Combining orders, unitization programs and well spacing—Authority of department.
79.76.170	Designation of resident agent for service of process.
79.76.180	General authority of department.
79.76.190	Employment of personnel.
79.76.200	Drilling records, etc., to be maintained—Inspection—Filing.
79.76.210	Filing of records with department upon completion, abandonment or suspension of operations.
79.76.220	Statement of geothermal resources produced—Filing.
79.76.230	Confidentiality of records.
79.76.240	Removal, destruction, alteration, etc., of records prohibited.
79.76.250	Violations—Modification of permit, when necessary—Departmental order—Issuance—Appeal.
79.76.260	Liability in damages for violations—Procedure.
79.76.270	Injunctions—Restraining orders.
79.76.280	Judicial review.
79.76.290	Violations—Penalty.
79.76.300	Aiding or abetting violations.
79.76.900	Severability—1974 ex.s. c 43.

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 ex.s. c 43 § 1.]

79.76.020 Short title. This chapter shall be known as the Geothermal Resources Act. [1974 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, re-drilling, 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 reinjection 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 ex.s. c 43 § 30.]

79.76.900 Severability—1974 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 ex.s. c 43 § 32.]

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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.

REVISED CODE OF WASHINGTON

1976 Edition

CERTIFICATE

The 1976 edition of the Revised Code of Washington, 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